

Also, petition of the Republican county convention of Platte County, Nebr., favoring the postal telephone bill—to the Committee on the Post-Office and Post-Roads.

By Mr. BURLEIGH: Petition of citizens of Maine, against repeal of the Grout law—to the Committee on Agriculture.

Also, petition of citizens of Harmony, Me., favoring a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. BUTLER of Pennsylvania: Petition of Edwin P. Sellow et al., against further armament—to the Committee on Military Affairs.

By Mr. CROMER: Petition of citizens of Anderson, Ind., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. EMERICH: Petition of the Heath & Milligan Manufacturing Company, of Chicago, favoring the original or Long-Lodge bill relative to the consular service—to the Committee on Foreign Affairs.

Also, petition of Hibbard, Spencer, Bartlett & Co., of Chicago, Ill., favoring legislation on railway rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Aermotor Company, of Chicago, favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of Olbrich & Goelbreek, of Chicago, Ill., favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Lord & Bushnell Company, of Chicago, favoring the passage of the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of B. Heller & Co., of Chicago, favoring bill H. R. 9303—to the Committee on Ways and Means.

Also, petition of the American Luxfer Prism Company, of Chicago, favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Armstrong Cork Company, of Chicago, favoring more power for the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Illinois Malleable Iron Company, favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of Marshall Field & Co., of Chicago, favoring the long-form Lodge bill for the reorganization of the consular service—to the Committee on Foreign Affairs.

Also, petition of Hibbard, Spencer, Bartlett & Co., favoring bill H. R. 15600—to the Committee on Interstate and Foreign Commerce.

By Mr. ESCH: Paper to accompany bill for relief of Electa E. Brooks, of Lynn, Wis.—to the Committee on Pensions.

By Mr. FITZGERALD: Petition of the American Institute of Marine Underwriters of New York, favoring bill S. 2262—to the Committee on Interstate and Foreign Commerce.

By Mr. FULLER: Petition of the National Association of Agricultural Implement and Vehicle Manufacturers, favoring repeal of the commutation clause of the homestead act, the timber and stone act, and the desert-land law—to the Committee on the Public Lands.

Also, petition of the Atlantic Carriers' Association, asking relief from unjust discrimination against sail vessels engaged in the coasting trade—to the Committee on the Merchant Marine and Fisheries.

By Mr. GOLDFOGLE: Petition of the Atlantic Carriers' Association, asking for the abolition of compulsory pilotage—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Ex-Letter Carriers' Association, of Philadelphia, favoring bill for the adjustment and payment of letter carriers under the eight-hour law—to the Committee on the Post-Office and Post-Roads.

Also, petition of Hodensyl & Sons, of New York, against repeal of the bankruptcy act—to the Committee on the Judiciary.

Also, petition of Walter N. Walker, of New York, against repeal of the bankruptcy law—to the Committee on the Judiciary.

Also, petition of the American Institute of Marine Underwriters, of New York, favoring bill S. 2262—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Maritime Association of New York City, asking for passage of a bill for the construction of a vessel to remove derelicts in the North Atlantic Ocean—to the Committee on Interstate and Foreign Commerce.

By Mr. HAMILTON: Petition of citizens of Barry County, Mich., favoring the Gallinger-Stone amendment to statehood bill—to the Committee on the Territories.

By Mr. LITTLEFIELD: Petition of 84 citizens of Maine, against repeal of the Grout oleomargarine law—to the Committee on Agriculture.

Also, petition of 140 citizens of Maine, favoring a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. McCALL: Petition of the Massachusetts State Board of Trade, asking for repeal of the tax of 15 per cent ad valorem on hides imported into the United States—to the Committee on Ways and Means.

Also, petition of Christian Endeavor societies to authorize the President to invite the governments of the world to join in establishing an international congress to deliberate upon questions of common interest to the nations and to make recommendations thereon to the governments—to the Committee on Foreign Affairs.

By Mr. SCOTT: Petition of the Kansas State Temperance Union, favoring passage of the Hepburn-Dolliver bill—to the Committee on the Judiciary.

By Mr. SHOBER: Petition of citizens of New York State, against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. SULLIVAN of Massachusetts: Petition of the Massachusetts Associated Board of Trade, favoring repeal of the duty on hides—to the Committee on Ways and Means.

By Mr. SULLIVAN of New York: Petition of the mayor of New York City, suggesting an amendment to sections 4281-4289, inclusive, of the Revised Statutes of the United States—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the American Federation of Musicians, for increase of pay for the Marine Band—to the Committee on Naval Affairs.

Also, petition of the American Hardware Manufacturers' Association, for repeal of the desert-land act, the timber and stone act, and the commutation clause of the homestead act—to the Committee on the Public Lands.

Also, petition of the Congress of the Knights of Labor, urging passage of the bill to prevent adulteration of drugs—to the Committee on Agriculture.

Also, petition of the Clothiers' Association of New York, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. WEBBER: Petition of the Oberlin Board of Commerce, for provision by Congress for absolute security of national banks by authorizing the Comptroller of the Currency to make the necessary assessments on national banks in order to guarantee their deposits and to supply deficiencies of assets in case of failure—to the Committee on Banking and Currency.

SENATE.

WEDNESDAY, February 22, 1905.

The Senate met at 11 o'clock a. m.

The Chaplain, Rev. EDWARD E. HALE, offered the following prayer:

*Who raised up the righteous man, * * * called him to his foot, gave the nations before him, and made him rule over kings? He gave them as dust to his sword, and as driven stubble to his bow. Who hath wrought and done it? * * * I, the Lord, the first, and with the last, I am He.*

Even so, Father; and on this day, sacred to the memory of the father of this nation, we thank Thee that Thou didst lead him forth from the people to be ruler of the nation, to give to it its life, its independence, its new light before Thee. We thank Thee for the past—yes, and for to-day. We ask Thee to renew this gift to children and to children's children, to the people who know him as first in war, first in peace, and first in the hearts of his countrymen; that Thou wilt be with the boys and girls, the men and women, who celebrate his birth to-day; that Thou wilt be with them for to-morrow and for the days that are to come, that they may walk in the way of righteousness, that they may look first to Thee and last to Thee, the Lord God, who leads the nations of the world.

And in this temple of Thine own Holy Spirit, in this Capitol of the nation, made sacred to Thee by the prayers of the brave men of the past, of the wise men of the past, for the men of to-day and for the men of the future, we ask Thee to consecrate it anew to Thy holy presence, to the memories of him who loved his country better than himself, and to the memories of all those who have made this nation under God what it is.

Be with us all, and be with us always.

Our Father who art in heaven, hallowed be Thy name. Thy kingdom come, Thy will be done, on earth as it is done in heaven. Give us this day our daily bread. Forgive us our trespasses as we forgive those who trespass against us. Lead

us not into temptation; but deliver us from evil, for Thine is the kingdom, and the power, and the glory, forever. Amen.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KITTREDGE and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. The Journal will stand approved.

GOVERNMENT OF CANAL ZONE.

The PRESIDENT pro tempore. The Senator from Maryland [Mr. GORMAN] does not seem to be here. There was a request made by the Senator from Maryland, and as he first made the request it was that immediately after the routine business the Canal Zone bill should be taken up for consideration. The Chair, however, misunderstanding him, put the request for unanimous consent in the form "immediately after the reading of the Farewell Address." The Senator from Maryland responded "Yes." So that was the agreement entered into. It would be much more convenient to the business of the Senate, for the printing, and all that sort of thing, if the unanimous consent could have been granted as the Senator from Maryland first asked it, to take up the bill immediately after the morning business.

Mr. ALLISON. I ask unanimous consent now that that question be postponed until after the morning business is concluded.

The PRESIDENT pro tempore. The Senator from Iowa asks unanimous consent that the Canal Zone bill be taken up for consideration immediately after the routine morning business is concluded. Is there objection? The Chair hears none. Will the Senator from North Dakota [Mr. McCUMBER] please take the chair? The President pro tempore is obliged to leave for the purpose of taking part in the ceremonies at the unveiling of the bust of Washington.

Mr. McCUMBER assumed the chair.

Mr. PETTUS. Mr. President, there is not a quorum in the Senate.

The PRESIDING OFFICER (Mr. McCUMBER in the chair). The Secretary will call the roll.

The Secretary called the roll; and, after some delay, the following Senators answered to their names:

Alger	Burnham	Foster of La.	Morgan
Allee	Carmack	Foster of Wash.	Overman
Allison	Clay	Fulton	Perkins
Bacon	Crane	Hansbrough	Pettus
Bailey	Dick	Heyburn	Proctor
Ball	Dietrich	Hopkins	Quarles
Bate	Dillingham	Kittredge	Smoot
Berry	Dryden	McCumber	Stewart
Beveridge	Elkins	Mallory	Teller
Blackburn	Fairbanks	Martin	Warren

The PRESIDING OFFICER. Forty Senators have responded to the call. A quorum is not present.

Mr. BACON. I move that the Sergeant-at-Arms be instructed to request the attendance of absent Senators.

The PRESIDING OFFICER. The Senator from Georgia moves that the Sergeant-at-Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant-at-Arms will execute the order of the Senate.

Mr. GALLINGER, Mr. KEAN, Mr. LATIMER, Mr. MCCREARY, Mr. LODGE, Mr. MILLARD, and Mr. SCOTT entered the Chamber and answered to their names.

The PRESIDING OFFICER. Forty-seven Senators have responded to the call. A quorum is present. If there is no objection, further proceedings under the call will be dispensed with. By the appointment of the President pro tempore, the Senator from California [Mr. PERKINS] will read the Farewell Address of Washington.

READING OF WASHINGTON'S FAREWELL ADDRESS.

Mr. PERKINS (at the Secretary's desk) read the address, as follows:

An address of George Washington to the people of the United States, September 19, 1796.

To the people of the United States:

FRIENDS AND FELLOW-CITIZENS: The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed to decline being considered among the number of those out of whom a choice is to be made.

I beg you at the same time to do me the justice to be assured that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that in withdrawing the tender of service, which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

The acceptance of and continuance hitherto in the office to which your suffrages have twice called me have been a uniform sacrifice of inclination to the opinion of duty and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this previous to the last election had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations and the unanimous advice of persons entitled to my confidence impelled me to abandon the idea. I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety, and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country you will not disapprove my determination to retire.

The impressions with which I first undertook the arduous trust were explained on the proper occasion. In the discharge of this trust I will only say that I have, with good intentions, contributed toward the organization and administration of the Government the best exertions of which a very fallible judgment was capable. Not unconscious in the outset of the inferiority of my qualifications, experience, in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to terminate the career of my political life my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me, and for the opportunities I have thence enjoyed of manifesting my inviolable attachment by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise and as an instructive example in our annals that under circumstances in which the passions, agitated in every direction, were liable to mislead; amidst appearances sometimes dubious; vicissitudes of fortune often discouraging; in situations in which not unfrequently want of success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts and a guaranty of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the free Constitution which is the work of your hands may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare which can not end but with my life, and the apprehension of danger natural to that solicitude, urge me on an occasion like the present to offer to your solemn contemplation and to recommend to your frequent review some sentiments which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be offered to you with the more freedom as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget as an encouragement to it your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that from different causes and from different quarters much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth, as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it, accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause fought and triumphed together. The independence and liberty you possess are the work of joint counsels and joint efforts, of common dangers, sufferings, and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common government, finds in the productions of the latter great additional resources of maritime and commercial enterprise and precious materials of manufacturing industry. The South, in the same intercourse, benefiting by the same agency of the North, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated, and while it contributes in different ways to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength to which itself is unequally adapted. The East, in a like intercourse with the West, already finds, and in the progressive improvements of interior communications by land and water will more and more find, a valuable vent for the commodities which it brings from abroad or manufactures at home. The West derives from the East supplies requisite to its growth and comfort, and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined can not fail to find in the united mass of means and efforts greater strength, greater resource, proportionately greater security from external danger, a less frequent interruption of their peace by foreign nations, and, what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves which so frequently afflict neighboring countries not tied together by the same governments, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty. In this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter may endeavor to weaken its bands.

In contemplating the causes which may disturb our Union, it occurs as matter of serious concern that any ground should have been furnished for characterizing parties by geographical discriminations—Northern and Southern, Atlantic and Western—whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of a party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You can not shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head. They have seen in the negotiation by the Executive and in the unanimous ratification by the Senate of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the General Government and in the Atlantic States unfriendly to their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties—that with Great Britain and that with Spain—which secure to them everything they could desire in respect to our foreign relations toward confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your union a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a constitution of government better calculated than your former for an intimate union and for the efficacious management of your common concerns. This Government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community, and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction rather than the organ of consistent and wholesome plans, digested by common counsels and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely in the course of time and things to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves

the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.

Toward the preservation of your Government and the permanency of your present happy state it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which may impair the energy of the system, and thus to undermine what can not be directly overthrown. In all the changes to which you may be invited remember that time and habit are at least as necessary to fix the true character of governments as other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially that for the efficient management of your common interests in a country so extensive as ours a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the state, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

The spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual, and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the Government itself through the channels of party passion. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government and serve to keep alive the spirit of liberty. This within certain limits is probably true, and in governments of a monarchical cast patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency it is certain there will always be enough of that spirit for every salutary purpose, and there being constant danger of excess, the effort ought to be by force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming it should consume.

It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The ne-

cessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments, ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duty of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursement to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear. The execution of these maxims belongs to your representatives; but it is necessary that public opinion should cooperate. To facilitate to them the performance of their duty it is essential that you should practically bear in mind that toward the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the conduct of the Government in making it, and for a spirit of acquiescence in the measures for obtaining revenue which the public exigencies may at any time dictate.

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more

readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation prompted by ill will and resentment sometimes impels to war the government contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject. At other times it makes the animosity of the nation subservient to projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity, gilding with the appearances of a virtuous sense of obligation a commendable deference for public opinion or a laudable zeal for public good the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils? Such an attachment of a small or weak toward a great and powerful nation dooms the former to be the satellite of the latter. Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not legally hazard the giving us provocation; when we may choose peace or war, as our interests, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the

maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand, neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; establishing with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the Government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend I dare not hope they will make the strong and lasting impression I could wish—that they will control the usual current of the passions or prevent our nation from running the course which has hitherto marked the destiny of nations. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good—that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the impostures of pretended patriotism—this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far in the discharge of my official duties I have been guided by the principles which have been delineated the public records and other evidences of my conduct must witness to you and to the world. To myself, the assurance of my own conscience is that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both Houses of Congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take and was bound in duty and interest to take a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance, and firmness.

The considerations which respect the right to hold this conduct it is not necessary on this occasion to detail. I will only observe that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without anything more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity toward other nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress without interruption to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though in reviewing the incidents of my Administration I am unconscious of intentional error, I am, nevertheless, too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence, and that, after forty-five years of my life dedicated to its service with an up-

right zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love toward it which is so natural to a man who views it in the native soil of himself and his progenitors for several generations, I anticipate with pleasing expectation that retreat in which I promise myself to realize without alloy the sweet enjoyment of partaking in the midst of my fellow-citizens the benign influence of good laws under a free government—the ever-favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors, and dangers.

Go: WASHINGTON.

UNITED STATES, September 19, 1796.

APPRAISERS' STORES, SAN FRANCISCO, CAL.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting an estimate recommended for inclusion in the general deficiency appropriation bill or the sundry civil appropriation bill for appraisers' stores, San Francisco, Cal., to fit up offices for customs officials during the construction of the new custom-house building, and incidental expenses, \$12,000; which was referred to the Committee on Appropriations, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the amendments of the Senate to the bill (H. R. 17939) relating to the construction of a dam and reservoir on the Rio Grande, in New Mexico, for the impounding of the flood waters of said river for purposes of irrigation, and providing for the distribution of said stored waters among the irrigable lands in New Mexico, Texas, and the Republic of Mexico, and to provide for a treaty for the settlement of certain alleged claims of the citizens of the Republic of Mexico against the United States of America.

The message also announced that the House insists upon its amendments to the bill (S. 4156) for the establishment of public-convenience stations in the District of Columbia, disagreed to by the Senate, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. BABCOCK, Mr. ALLEN, and Mr. COWHERD managers at the conference on the part of the House.

The message further announced that the House had passed the following bills and joint resolution; in which it requested the concurrence of the Senate:

H. R. 11218. An act setting aside a certain island in Bartlett Lake, Minnesota, as a park and forest reserve;

H. R. 18751. An act to extend the time for the construction of a bridge across Rainy River by the International Bridge and Terminal Company;

H. R. 18862. An act to provide for a land district in Yellowstone, Rosebud, and Carbon counties, in the State of Montana, to be known as the Billings land district;

H. R. 18965. An act to revise and amend the tariff laws of the Philippine Islands, and for other purposes; and

H. J. Res. 217. Joint resolution to return to the proper authorities certain Union and Confederate battle flags.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

S. 63. An act for the relief of Charles Stierlin;

S. 2354. An act to authorize the promotion of Lieut. Thomas Mason, Revenue-Cutter Service;

S. 4066. An act for the relief of Leonard I. Brownson;

S. 5337. An act for the relief of Jacob Lyon;

S. 5771. An act to reinstate Francis S. Nash as a surgeon in the Navy;

S. 5902. An act for the relief of the Central Railroad Company of New Jersey;

S. 6351. An act granting an increase of pension to Martin T. Cross;

S. 6733. An act for the relief of M. L. Skidmore;

H. R. 15305. An act granting a pension to Isaac F. Clayton;

H. R. 17331. An act relating to a dam across the Rainy River; and

H. R. 18785. An act to promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a petition of sundry citizens of Phoenix, Ariz., praying for the ratification of inter-

national arbitration treaties; which was referred to the Committee on Foreign Relations.

He also presented a memorial of sundry citizens of Minnesota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of the Dominican Republic, praying that an investigation be made into the conditions existing in that Republic; which was referred to the Committee on Foreign Relations.

Mr. FAIRBANKS presented the petition of James E. Piety and 91 other members of the bar of Terre Haute, Ind., praying for the enactment of legislation to establish four terms of the United States court at that city; which was referred to the Committee on the Judiciary.

He also presented a petition of the Merchants' Association of Richmond, Ind., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

He also presented a petition of the Travelers' Protective Association of Terre Haute, Ind., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

Mr. PLATT of New York presented a petition of the Navy League of the United States, praying that an appropriation be made providing for the restoration and fitting out of the old frigate *Constitution*; which was referred to the Committee on Naval Affairs, and ordered to be printed in the RECORD, as follows:

[Navy League of the United States, headquarters Maritime Exchange Building, 78 Broad street, New York City.]

The following preamble and resolutions, having been unanimously approved by the Headquarters Section of the Navy League of the United States and twelve others, are respectfully presented to Congress for its consideration:

Whereas an item of \$400,000 in the naval appropriation bill presented at the last Congress for the restoration and fitting out of the old frigate *Constitution* as a training ship was thrown out, after having passed the Senate, by the Committee on Naval Affairs of the House of Representatives as an unwarranted extravagance; and

Whereas the *Constitution*, popularly known as "*Old Ironsides*," the most historic ship of the United States Navy, appeared in the gloomiest hours of the war of 1812 like a gleam of light in the darkness; and

Whereas throughout her whole career *Old Ironsides* has ever been associated in the minds of the American people with deeds of valor which have made her name an inspiration in the American Navy; and

Whereas by strange fatality the *Constitution*, a ship of the same period, which through ill fortune was blockaded in Chesapeake Bay during the entire war of 1812, was rebuilt as a training ship for midshipmen; and

Whereas the glorious old frigate, bearing a name that is synonymous with all that is noble and bright in our nation's history, lies a dismantled and rotting hulk at the wharf whence one hundred and seven years ago she sailed to enter upon her heroic career: Now, therefore, be it

Resolved, That we, members of Headquarters Section, No. 10, of the Navy League of the United States, hereby unite with all sections of the Navy League at home and abroad in respectfully urging upon Congress that the appropriation which was rejected at the last session be now allowed; and be it further

Resolved, That we feel it to be the duty of our nation to preserve the famous old *Constitution* as an object lesson to the youth of our land and as a reminder to the officers and men of our Navy that they, through their own valorous deeds, may one day make the name of the ships confided to their trust likewise immortal.

William Boerum Section, No. 22, Allenhurst, N. J.; Decatur Section, No. 20, Cambridge, Md.; Commodore Perry Section, No. 14, Kenyon, R. I.; Admiral Dahlgren Section, No. 31, Scranton, Pa.; London Section, No. 48, London, England; Ben Franklin Section, No. 52, Poplar Bluff, Mo.; Paris Section, No. 36, Paris, France; Admiral Bunce Section, No. 42, Hartford, Conn.; Admiral H. C. Taylor Section, No. 49, Southampton, L. I.; Captain Gridley Section, No. 45, Copper Cliff, Ontario; Constitution Section, No. 43, Bayonne, N. J.; Battle Ship Oregon Section, No. 25, The Oranges, N. J.

ROBERT S. SLOAN,

Secretary Navy League of the United States.

Mr. PLATT of New York presented memorials of H. D. Fargo, of Batavia; of the congregation of the Methodist Episcopal Church of Rochester; of Thomas Wildes, of New York City; of Andrew A. Ayres, of Brooklyn; of W. C. Black, of New York City; of A. C. Gardner, of New York City, and of S. R. Knapp, of Peekskill, all in the State of New York, remonstrating against the use of trust funds for sectarian school purposes; which were ordered to lie on the table.

He also presented petitions of sundry citizens of Holley, Lowville, Newhaven, Jamestown, New York City, Schenectady, Silver Creek, Canaan Four Corners, Montgomery, New Brighton, Rensselaer County, Lestershire, Stamford, Newfane, Oneonta, Watertown, Lake Placid, Chatham, Otsego County, Cort-

land, and Haverstraw, all in the State of New York, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

Mr. NELSON presented memorials of sundry citizens of Roseau, Sherburne, Philbrook, Duluth, Drywood, Mankato, Sauk Center, Fort Ripley, Faribault, and Roseau County, all in the State of Minnesota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented a petition of the legislature of Minnesota, praying for the enactment of legislation providing for the free importation of Canadian seed wheat; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the chapter of the American Institute of Bank Clerks of St. Paul, Minn., praying for the enactment of legislation providing for the redemption of mutilated paper currency; which was referred to the Committee on Finance.

Mr. HOPKINS presented petitions of Musicians' Protective Union No. 204, of Mattoon; of Musical Union No. 89, of Decatur; of Local Union No. 178, Musicians' Protective Association, of Galesburg, and of Local Union No. 29, Musicians' Union, of Belleville, all in the State of Illinois, praying for the enactment of legislation to increase the salaries of the members of the Marine Band, and also to prohibit the unfair competition of that organization with professional civilian musicians; which were referred to the Committee on Naval Affairs.

He also presented petitions of sundry citizens of Aurora and Braidwood, in the State of Illinois, praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

He also presented the petition of Marion Talbot, dean of women of the University of Chicago, Chicago, Ill., praying for the enactment of legislation providing compulsory education in the District of Columbia; which was referred to the Committee on the District of Columbia.

He also presented memorials of sundry citizens of Normal and Monmouth, in the State of Illinois, remonstrating against the enactment of legislation providing for the closing on Sundays of certain places of business in the District of Columbia; which were referred to the Committee on the District of Columbia.

He also presented petitions of sundry citizens of Danville, Peoria, Rockford, Freeport, Joliet, and Wauconda, all in the State of Illinois, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

He also presented a petition of the faculty of Rush Medical College, of Chicago, Ill., praying for the passage of the so-called "pure-food bill;" which was ordered to lie on the table.

He also presented the petitions of Lake Division, No. 302, Brotherhood of Locomotive Engineers, of Chicago, and W. F. Hynes Lodge, No. 48, Brotherhood of Locomotive Firemen, of Peoria, and of Local Division No. 386, Order of Railway Conductors, of East St. Louis, all in the State of Illinois, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

Mr. DICK presented a petition of sundry citizens of Kipton, Ohio, praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which was referred to the Committee on Patents.

He also presented a petition of sundry citizens of Manila, P. I., praying for a reduction of the duty on tobacco imported from the Philippine Islands into the United States; which was referred to the Committee on the Philippines.

He also presented a petition of the Chamber of Commerce of Sitka, Territory of Alaska, praying for the adoption of a certain amendment to the civil code of that Territory providing for a reduction of the license on electric and power plants; which was referred to the Committee on Territories.

He also presented a petition of Local Lodge No. 327, American Federation of Musicians, of Crestline, Ohio, praying for the enactment of legislation to increase the salaries of members of the Marine Band and to prohibit that organization from entering into competition with civilian musicians; which was referred to the Committee on Naval Affairs.

He also presented a memorial of the Christian Endeavor Society of Norwalk, Ohio, and a memorial of the congregation of the Methodist Episcopal Church of Youngstown, Ohio, remonstrating against the repeal of the present antiscience law; which was referred to the Committee on Military Affairs.

He also presented a memorial of the Enterprise Manufacturing Company, of Akron, Ohio, and a memorial of the Employers' Association of Columbus, Ohio, remonstrating against the passage of the so-called "anti-injunction bill;" which were referred to the Committee on the Judiciary.

He also presented petitions of Grange No. 1368, of Tawawa; of Grange No. 998, of Trenton; of Grange No. 54, of Pomona; of Powell Grange, No. 1584, of Powell, all Patrons of Husbandry, and of the Farmers' Institute of Holmesville, all in the State of Ohio, praying for the passage of the so-called "postal savings bank bill;" which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of sundry citizens of Kenton, Ohio, and a memorial of sundry citizens of Akron, Ohio, remonstrating against the passage of the so-called "parcels-post bill;" which were referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of the Cincinnati Clergymen's Association, of Cleveland; of the congregation of the Unity Church of Toledo; of the Woman's Suffrage Association of Ada, and of sundry citizens of Akron, all in the State of Ohio, praying for the ratification of international arbitration treaties; which were referred to the Committee on Foreign Relations.

He also presented memorials of Pomono Grange, No. 54, of Delaware County; of Grange No. 32, of Ravenna, and of Grange No. 186, of Andover, all of the Patrons of Husbandry, in the State of Ohio, remonstrating against any reduction of the duty on colored oleomargarine; which were referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Board of Commerce of Oberlin, Ohio, praying for the enactment of legislation providing for the protection of depositors in national banks; which was referred to the Committee on Finance.

He also presented petitions of the Woman's Christian Temperance Unions of Ashtabula and Mechanicsburg; of the Friday Club, of Hillsboro; of the Emerson Club, of Dayton, and of the Farmers' Institute of New Philadelphia, all in the State of Ohio, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented a memorial of A. Overholt & Co., of Pittsburgh, Pa., remonstrating against the adoption of any amendment to the so-called "pure-food bill" relating to whisky; which was ordered to lie on the table.

He also presented a memorial of the National Wine Growers' Association of Cleveland, Ohio, and a memorial of sundry citizens of Cincinnati, Ohio, remonstrating against the adoption of any amendment to the so-called "pure-food bill" relating to native wines; which were ordered to lie on the table.

He also presented a petition of Local Lodge No. 183, Brotherhood of Locomotive Engineers of Collinswood, Ohio, and a petition of Local Lodge No. 9, Brotherhood of Locomotive Firemen, of Columbus, Ohio, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

He also presented petitions of the Home Missionary Society of Wooster, of the Young People's Alliance of Galion, of the Ministerial Associations of Youngstown, Delaware, and East Liverpool, of the Woman's Christian Temperance Unions of Norwalk and Bairdstown, and of the congregation of the Methodist Episcopal Church of Oberlin, all in the State of Ohio, praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the new States to be formed; which were ordered to lie on the table.

He also presented petitions of the Shippers' Association of Columbus; of the South Side Business Men's Association, of Columbus; of the Wholesale Fruit and Produce Association of Cleveland; of the Commission Merchants' Leagues of Toledo and Cincinnati; of the Millers' Association of Ohio; of the Commercial Travelers' Club of Cincinnati, and of the Carriage Makers' Club of Cincinnati, all in the State of Ohio, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

Mr. GAMBLE presented petitions of R. R. Jewett and 17 other citizens of Geddes, of George H. Ballweg and 19 other citizens of Bath, of W. O. Johnson and 63 other citizens of Alcester, of P. H. Christenson and 9 other citizens of Spink County, of N. M. Jorgenson and 69 other citizens of Beresford, of F. Mann and 63 other citizens of Iroquois, of Alfred Johnson and 61 other citizens of Britton, of George Bolles and 58 other citizens of Aberdeen, of H. C. Pfeiffer and 139 other citizens

of Parker, of C. Stotz and 63 other citizens of Roscoe, of J. S. Thompson and 69 other citizens of Bancroft, of R. C. Reinsche and 64 other citizens of Milltown, of Anna Patzkowski and 63 other citizens of Westford, of N. C. Petersen and 62 other citizens of Turner County, and of John Nelson and 63 other citizens of Irene, all in the State of South Dakota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sundays; which were referred to the Committee on the District of Columbia.

Mr. GALLINGER presented a petition of sundry citizens of Wolfeboro, N. H., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

He also presented memorials of sundry citizens of Washington, D. C., remonstrating against the enactment of legislation requiring the closing of certain places of business in the District of Columbia on Sunday; which were referred to the Committee on the District of Columbia.

Mr. McCUMBER presented memorials of Marie Winter and 11 other citizens of McHenry County, of Edward T. Burke and 65 other citizens of Valley City, and of John H. Appersbach and 30 other citizens of Jamestown, all of the State of North Dakota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. BURROWS presented petitions of the Christian Reform Federation of Milford, of sundry citizens of Michigan, of the Christian Endeavor Union of Detroit, and of the Woman's Club of Grand Haven, all in the State of Michigan; of the National Woman's Christian Temperance Union of New York City, of the Legislative League of New York City, and of the Woman's Club of Ord, Nebr., praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented memorials of Rainsville Grange, No. 910, Patrons of Husbandry, of Ida; of Anne Grange, Patrons of Husbandry, of Camden; of Sitka Grange, No. 861, Patrons of Husbandry, of Newaygo County; of Davis Grange, No. 1085, Patrons of Husbandry, of Davison; of County Line Grange, No. 671, Patrons of Husbandry, of Sand Lake; of Wheatland Grange, No. 273, Patrons of Husbandry, of Pittsford; of Glennie Grange, Patrons of Husbandry, of Glennie; of Lakeview Grange, No. 872, Patrons of Husbandry, of Otsego County; of Hope Grange, No. 1016, Patrons of Husbandry, of Midland County; of Maple Hill Grange, No. 691, Patrons of Husbandry, of Central Lake; of Montgomery Grange, No. 948, Patrons of Husbandry, of Montgomery, and of Butternut Grange, No. 1235, Patrons of Husbandry, of Butternut, all in the State of Michigan, remonstrating against the repeal of the present oleomargarine law; which were referred to the Committee on Agriculture and Forestry.

He also presented petitions of sundry citizens of Davison, Lawton, Detroit, Alpena, Lansing, Luther, Saginaw, Grand Rapids, and Reading, all in the State of Michigan, praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

He also presented memorials of sundry citizens of Jackson, Milford, Petoskey, Lesterville, Arden, Montcalm, Battlecreek, Dewitt, Pomona, Berrien Springs, Douglas, Pawpaw, Grand Traverse County, Pottsville, Alandon, Elk Rapids, and Kent County, all in the State of Michigan, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. PROCTOR presented the petition of C. A. Bump and 56 other citizens of West Salisbury, Vt., praying for the establishment of a parcels-post and post-check currency; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. STEWART presented a memorial of the legislature of Nevada, relative to reequipping and reopening to coinage the United States branch mint at Carson City, in that State; which was referred to the Committee on Appropriations, and ordered to be printed in the RECORD, as follows:

Senate memorial and joint resolution to Congress relative to reequipping and reopening to coinage the United States branch mint at Carson City.

To the Senate and House of Representatives, in Congress assembled:

Your memorialists, the legislature of the State of Nevada, respectfully show that one of the great industries by which the people of Nevada live is mining for gold and silver. Whatever, therefore, bur-

dens, discourages, or imposes restraints upon the production of the precious metals, retards or delays the conversion of same into the coins authorized by the General Government, works a hardship hurtful to our miners and detrimental to the bringing of foreign capital for investment in our mining enterprises.

The mineral resources of the State are vast, almost beyond belief. No region of the earth excels Nevada in richness and extent.

The bullion output of the region to be accommodated by the Carson branch mint not only embraces a greater area than any mineral belt or mineral deposit surrounding any of the United States mints, while the country naturally tributary to this mint establishes its location as a most favorable point beneficial to the producers of the precious metals.

The famous Comstock lode, situated but a few miles from this mint, and which, during the dark days of the rebellion, furnished the gold and silver warranting the redemption of the paper currency forced into circulation to meet the great emergency facing the life of the nation, continues to yield her precious treasures in bounteous quantities, later to pass by the doors of this mint to the San Francisco mint, to other mints thousands of miles distant, or to private assay offices and smelting works. The same can be said of every ounce of bullion produced in this State.

The rich mineral discoveries commencing in 1900 in the southwestern portion of the State, embracing the Tonopah and Goldfield districts, with equally rich deposits now being developed in that vicinity, indisputably assure the future production of mineral wealth equal to that at any period in the history of the State.

The large ore deposits in these new mineral fields, excelling in richness and extent all late mineral discoveries throughout the inhabited world, are to-day attracting prospectors, miners, and capitalists seeking possession and investments unequalled in the search for hidden treasures.

Railroads to meet the needs other transportation facilities can not accommodate are being rushed to completion, while the increased population everywhere denotes an upward tendency in mining the precious metals. Other industries are going forward in keeping with the impetus given to mining.

The bullion output of these districts also passes the very door of the Carson branch mint, denying to the producer that just recognition and speedy return for his toil and energies.

Your memorialists are informed the Carson branch mint has been dismantled to some extent in the transference of certain portions of its machinery to other mints, but that a moderate appropriation would restore it to its original coining capacity. With this accomplished, and the enactment of requisite laws and regulations for reopening same to coinage, our citizens would again be the recipients of benefits the General Government a few years ago accorded them: Therefore, be it

Resolved by the senate (the assembly concurring), That our Senators and Representative in Congress be instructed to use all honorable means in their power toward reequipping and reopening to coinage the United States branch mint at Carson City; and be it further

Resolved, That the governor be requested to transmit a duly authenticated copy of this memorial and joint resolution to the honorable the Secretary of the Treasury, to each of our United States Senators, and to our Representative in Congress.

STATE OF NEVADA, Department of State, as:

I, W. G. Douglass, the duly elected, qualified, and acting secretary of state of the State of Nevada, do hereby certify that the foregoing is a true, full, and correct copy of the original senate memorial and joint resolution to Congress, now on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the great seal of State at my office in Carson City, Nev., this 14th day of February, A. D. 1905.

[SEAL.]

W. G. DOUGLASS,
Secretary of State.

Mr. FOSTER of Washington presented a petition of the Palouse Implement Dealers' Association, of Moscow, Idaho, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

Mr. CLAPP presented memorials of sundry citizens of Minnesota, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. DRYDEN presented a petition of the New Jersey Lumbermen's Protective Association, of Newark, N. J., praying for the passage of the so-called "Townsend railroad-rate bill;" which was referred to the Committee on Interstate Commerce.

He also presented a memorial of Enterprise Harbor, No. 2, American Association of Masters and Pilots of Steam Vessels, of Camden, N. J., remonstrating against the enactment of legislation to remove discriminations against American sailing vessels in the coasting trade; which was referred to the Committee on Commerce.

He also presented a petition of sundry citizens of Newark, N. J., praying for the enactment of legislation to restore the canteen to the army posts; which was referred to the Committee on Military Affairs.

Mr. CLARK of Montana presented a petition of the legislature of Montana, praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce, and ordered to be printed in the RECORD, as follows:

Senate joint memorial No. 1.

To the honorable Senate and House of Representatives of the United States in Congress assembled:

Whereas experience and the decisions of the Federal courts have demonstrated that legislation applying to public carriers engaged in inter-

state commerce is required for the protection and preservation of the rights of the shipper and passenger: Therefore, be it

Resolved, That we, your memorialists, the ninth legislative assembly of the State of Montana, respectfully petition your honorable body, in the exercise of the power to regulate commerce between the several States granted by the Constitution of the United States, to speedily enact such legislation as will insure reasonable and equitable rates and charges for the transportation of property and passengers between the States and prevent unreasonable and unjust discrimination in the conduct of the business of interstate commerce, and to that end that the Interstate Commerce Commission be given the power and authority not only to determine when rates are unreasonable, but also to determine and establish reasonable rates in lieu of such rates as may be by said Commission adjudged unreasonable; be it further

Resolved, That the secretary of the State be, and he is hereby, directed to transmit copies of this memorial to the President of the United States, the President of the Senate, the Speaker of the House, and our Senators and Representatives in Congress.

EDWIN NORRIS,
President of the Senate.
WYLLIS A. HEDGES,
Speaker of the House.

Approved January 30, 1905.

Filed January 30, 1905, at 3.20 p. m.

J. K. TOOLE, *Governor.*

A. N. YODER,
Secretary of State.

Mr. WARREN presented a petition of the Twentieth Century Club, of Newcastle, Wyo., requesting that the Interstate Commerce Commission be given authority to fix, subject to review by the proper courts, reasonable railroad rates to take the place of such rates as may have been found to be unreasonable; which was referred to the Committee on Interstate Commerce.

Mr. TELLER presented a petition of Fred H. Beecher Post, No. 70, Department of Colorado, Grand Army of the Republic, of Colorado, praying for the enactment of legislation to modify and simplify the pension laws of the United States; which was referred to the Committee on Pensions.

He also presented a memorial of the Chamber of Commerce of Colorado Springs, Colo., remonstrating against any reduction of the duty on sugar imported from the Philippine Islands; which was referred to the Committee on the Philippines.

He also presented a memorial of sundry wholesale grocers of Denver, Colo., and a memorial of sundry citizens of Denver, Colo., remonstrating against the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

He also presented petitions of Garfield Lodge, No. 349, Brotherhood of Railroad Trainmen, of Grand Junction; of Grand Valley Lodge, No. 594, Brotherhood of Locomotive Firemen, of Grand Junction, and of Mount Ouray Lodge, No. 140, Brotherhood of Locomotive Firemen, of Salida, all in the State of Colorado, praying for the passage of the so-called "employers' liability bill," which were referred to the Committee on Interstate Commerce.

Mr. CULBERSON presented a memorial of sundry citizens of Fort Worth, Tex., and a memorial of sundry citizens of Poetry, Tex., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. DIETRICH presented a memorial of the Nebraska Federation of Commercial Clubs, remonstrating against the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

Mr. COCKRELL. I present the affidavit of Josiah Buck and Pavalle Buck, of Dr. N. A. Williams, and of Rev. J. W. Day and F. W. Cohass, together with an additional petition of the claimant relative to an increase of pension to David Bartlett. I move that the papers be referred to the Committee on Pensions to accompany the bill (S. 67) granting an increase of pension to David Bartlett.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. CLARK of Wyoming, from the Committee on Public Lands, to whom was referred the amendment submitted by Mr. WARREN on the 20th instant, providing for the survey of certain townships in the State of Wyoming, intended to be proposed to the sundry civil appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations, and printed; which was agreed to.

Mr. BURNHAM, from the Committee on Territories, to whom was referred the bill (S. 6980) to aid in the construction of a railroad and telegraph and telephone line in the Territory of Alaska, reported it with amendments, and submitted a report thereon.

Mr. McCUMBER. I move that the bill (S. 5264) establishing an additional recording district in Indian Territory, and for

other purposes, be recommitted to the Committee on Indian Affairs, it having been inadvertently reported.

The PRESIDENT pro tempore. The bill will be recommitted to the Committee on Indian Affairs.

Mr. McCUMBER, from the Committee on Pensions, to whom was referred the bill (H. R. 4390) granting an increase of pension to Francis W. Seeley, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 13888) granting a pension to Elizabeth Augusta Russell, reported it without amendment, and submitted a report thereon.

Mr. SPOONER, from the Committee on the Judiciary, to whom was referred the bill (H. R. 2531) to divide Washington into two judicial districts, reported it with amendments, and submitted a report thereon.

Mr. WARREN, from the Committee on Claims, to whom was referred the bill (S. 7218) authorizing and directing the Secretary of State to examine and settle the claim of the Wales Island Packing Company, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 1520) for the relief of the Mission of St. James, in the State of Washington, asked to be discharged from its further consideration, and that it be referred to the Committee on Private Land Claims; which was agreed to.

Mr. WARREN. I am directed by the Committee on Claims, to whom was referred the bill (H. R. 10089) for the relief of R. D. Ashford, of Lockport, Niagara County, N. Y., to report it with an amendment, and to submit a report thereon. It is a small bill, which has passed the House, and it is to be amended. It may require a conference, and I therefore ask for its present consideration.

Mr. HALE. In view of the absolute necessity of proceeding with appropriation bills, I must object to the passage of any other bill.

The PRESIDENT pro tempore. Objection is made, and the bill will be placed on the Calendar.

Mr. MARTIN, from the Committee on Claims, to whom was referred the bill (H. R. 6984) for the relief of Kate R. Sharretts and Edward A. Sharretts, administrators of George E. W. Sharretts, reported it without amendment.

Mr. DIETRICH. I am directed by the Committee on Public Lands, to whom was referred the bill (H. R. 18279) to authorize the Secretary of the Interior to accept the conveyance from the State of Nebraska of certain described lands and granting to said State other lands in lieu thereof, and for other purposes, to report it without amendment.

It is intended to correct the title to a homestead upon which the party has lived for thirty-three years, and I ask for its immediate consideration.

Mr. HALE. I must object, Mr. President.

The PRESIDENT pro tempore. The Senator from Maine objects, and the bill will be placed on the Calendar.

Mr. PETTUS, from the Joint Select Committee of the Senate and House of Representatives on the Disposition of Useless Papers in the Executive Departments, submitted a report on the files and papers described in the report of the Secretary of the Treasury in House Document No. 595, Fifty-eighth Congress, second session, dated March 8, 1904.

He also, from the same joint select committee, submitted a report on the files and papers described in the report of the Secretary of the Interior in Senate Document No. 236, Fifty-eighth Congress, second session, dated March 28, 1904, and in House Document No. 255, Fifty-eighth Congress, third session, being the report of the Secretary of the Interior, dated January 23, 1905.

Mr. PLATT of Connecticut, from the Committee on the Judiciary, to whom was referred the bill (H. R. 14589) to provide for terms of the United States district and circuit courts at Washington, N. C., reported it with an amendment.

Mr. CULBERSON, from the Committee on the Judiciary, to whom was referred the bill (H. R. 17579) to create a new division of the western judicial district of Louisiana, and to provide for terms of court at Lake Charles, La., and for other purposes, reported it with amendments.

Mr. McCUMBER. I am directed by the Committee on Pensions, to whom was referred the bill (H. R. 17330) making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1906, and for other purposes, to report it without amendment, and I submit a report thereon. I give notice that immediately after the consideration of the Indian appropriation bill has been concluded I shall call up this bill for consideration.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. HANSBROUGH, from the Committee on Public Lands, to whom were referred the following bills, reported them each without amendment, and submitted reports thereon:

A bill (S. 7247) ceding a strip or parcel of land to the city of Hot Springs, Ark., for use as a public street; and

A bill (S. 5860) for the relief of settlers upon the abandoned Fort Rice Military Reservation.

Mr. HANSBROUGH, from the Committee on the District of Columbia, to whom was referred the amendment submitted by Mr. STEWART on the 1st instant, relative to an appropriation for the Providence Hospital in the city of Washington, intended to be proposed to the sundry civil appropriation bill, reported favorably thereon, and moved that it be printed, and, with the accompanying papers, referred to the Committee on Appropriations; which was agreed to.

IMPROVEMENT OF PUBLIC ROADS.

Mr. PLATT of New York, from the Committee on Printing, reported the following resolution; which was considered by unanimous consent, and agreed to:

Resolved by the Senate. That there be printed for the use of the Senate document room 10,000 copies each of Senate bill No. 4098 and the report thereon, being report No. 2626, third session Fifty-eighth Congress.

BILLS INTRODUCED.

Mr. LONG introduced a bill (S. 7249) providing that the act of May 19, 1902, entitled "An act for the protection of cities and towns of the Indian Territory, and for other purposes," shall be applicable to any incorporated town in Indian Territory having a population of 1,000 or over; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. PROCTOR introduced a bill (S. 7250) to establish a national military park on St. Michaels Island, Lake Champlain, and to erect a monument in honor of the American sailors and soldiers killed in the battle of Plattsburg; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. TELLER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 7251) granting a pension to Julia L. Parrott; and

A bill (S. 7252) granting a pension to Mary J. Chenoweth.

Mr. BURROWS introduced a bill (S. 7253) for the relief of the estate of Joshua Hill, deceased; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. ALLISON introduced a bill (S. 7254) for the relief of Bert E. Barnes; which was read twice by its title, and referred to the Committee on Military Affairs.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. CLARK of Montana submitted an amendment relative to the reservation of lands embraced within the limits of the Flathead Indian Reservation, in the State of Montana, for Catholic mission schools, etc., intended to be proposed by him to the Indian appropriation bill; which was ordered to lie on the table, and be printed.

He also submitted an amendment authorizing the President to reserve not to exceed 5,000 acres of timber land within the limits of the Flathead Indian Reservation, in the State of Montana, for the use of the Flathead Indians as a fuel supply, intended to be proposed by him to the Indian appropriation bill; which was ordered to lie on the table, and be printed.

Mr. CLAPP submitted an amendment providing for a preliminary survey with a view of constructing a canal between Lake Winibogoshish and Portage Lakes, in the State of Minnesota, intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. McCOMAS submitted an amendment authorizing the Secretary of the Treasury to make full rebate of all duties imposed by law on anthracite coal imported into any port of the United States from foreign countries from October 6, 1903, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$15,000 to purchase the Peabody and Gunton properties adjacent to the site of the customs-house building, Baltimore, Md., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

He also submitted an amendment authorizing the Secretary of the Treasury to repay \$14,060.39 paid as duty upon anthracite coal at the port of Baltimore, Md., to the persons who paid the same after the 6th day of October, 1902, intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. BEVERIDGE submitted an amendment authorizing the accounting officers of the Treasury Department to adjust and settle the claims of West Virginia, Nebraska, Kansas, Louisiana, and South Carolina, and the claims of like character of other States now on file or hereafter filed on or before the 1st day of January, 1906, before the Treasury Department, etc., intended to be proposed by him to the general deficiency appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Military Affairs.

STATUE OF FRANCES E. WILLARD.

Mr. CULLOM submitted the following concurrent resolution; which was referred to the Committee on Printing:

Resolved by the Senate (the House of Representatives concurring). That there be printed and bound of the proceedings in Congress upon the acceptance of the statue of the late Frances E. Willard, presented by the State of Illinois, 16,500 copies, of which 5,000 shall be for the use of the Senate, 10,000 for the use of the House of Representatives, and the remaining 1,500 shall be for the use and distribution by the governor of the State of Illinois; and the Secretary of the Treasury is hereby directed to have printed an engraving of said statue to accompany said proceedings, said engraving to be paid for out of the appropriation for the Bureau of Engraving and Printing.

PAYMENT OF WITNESSES IN IMPEACHMENT TRIALS.

Mr. MALLORY submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved. That the rule for paying witnesses summoned to appear before the Senate in impeachment trials shall be as follows:

For each day that a witness shall attend, \$4, and \$4 for each day spent in traveling to or from the place of examination by the usual route. A witness shall also be entitled to be reimbursed his necessary expenses for traveling to and from the place of examination, in no case to exceed the sum of 7 cents a mile for the distance by him actually traveled for the purpose of appearing as a witness.

THE IMPEACHMENT TRIAL.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day.

The Secretary read the resolution submitted yesterday by Mr. HALE, as follows:

Resolved. That all proceedings in the impeachment trial now before the Senate sitting as a court shall be terminated on Saturday, February 25 next, and a final vote shall be taken on the afternoon of that day at 4 o'clock.

Mr. HALE. I offer as a substitute for that resolution what I send to the desk. I ask that it may be read and printed, and that then the whole matter shall go over, because I am informed that arrangements are now being made by which it is hoped and expected that the entire proceedings will terminate with the end of this week. If that can be done I am entirely willing to waive asking the Senate to make any established rule about it. For the present let it lie on the table.

The PRESIDENT pro tempore. The Senator from Maine withdraws his former resolution and in place substitutes the order sent to the desk. Does he desire to have it read?

Mr. HALE. I desire to have it read.

The Secretary read as follows:

Ordered. That all proceedings before the Senate sitting in the trial of the impeachment against Charles Swayne, judge of the United States in and for the northern district of Florida, shall terminate on Saturday, February 25 next, and, in pursuance of this order, all testimony upon either side shall be closed on Friday, the 24th day of February next, and the Senate shall commence its session sitting for the trial of said impeachment proceedings at 12 o'clock meridian on said Saturday, the 25th day of February next; and, without any other motion or proceeding intervening, the counsel for the defense shall have until 2 o'clock of said day to present the case of the defendant, said time to be apportioned or divided as said counsel may determine; the managers on the part of the House of Representatives shall have, to present the case against said Charles Swayne, the time from 2 o'clock until 4 o'clock of said day, said time to be apportioned or divided as the managers may determine; at 4 o'clock, without further motion or proceeding intervening, the final vote shall be taken upon said impeachment proceedings.

The PRESIDENT pro tempore. The resolution will be printed and lie on the table.

Mr. PLATT of Connecticut. With regard to the resolution which has been introduced by the Senator from Maine, which is to lie upon the table and be printed, I wish to remark that the present rules, as I recollect them, provide—which it seems to me ought to be the provision—that the argument shall be opened by the managers and closed by the managers. This proposed resolution would seem to have the argument opene

by the defense. I merely make the suggestion to the Senator from Maine.

Mr. HALE. I said before the Senator came in—

Mr. PLATT of Connecticut. I heard the statement.

Mr. HALE. That in view of an arrangement being made which would be satisfactory to all parties to terminate the proceedings this week, I would not urge it. If it comes up again the terms of it can be made so that they may cover the point raised by the Senator, but I hope it will not come up again at all, and that other arrangements will be made by which we shall have the matter out of the way this week and be able to proceed to other business.

There are now, Mr. President, untouched by the Senate, five of the great appropriation bills, aggregating \$500,000,000, for the coming fiscal year, and after Saturday there are practically but five legislative days. The Senate will have to average more than one great appropriation bill a day, and it becomes a very serious matter whether we can so attend to this business that all those bills will be gotten through. But if this proceeding can be removed from us and give us our time we can, I hope and believe, put the appropriation bills through. If it is allowed to drag its slow length along and no halt to the proceeding is called and no arrangement is enforced, Senators may be prepared to see it continued for three hours every day until noon on the 4th of March.

I wish to prevent that and at the same time, Mr. President, I do not seek—I have no pride in this matter—to force it now; but if the proceeding is prolonged beyond this week I shall find some method of bringing the Senate to a vote in some way to draw the proceeding to a close.

Mr. BACON. Mr. President, I quite agree with the Senator from Maine that the legislative business before this Senate is of extreme importance, but I do not think that anything is of more importance than that the Senate shall give such direction to any measures which it may deem necessary for expedition of the impeachment trial as will not bring into discredit and disrepute the very high and important function which we are now performing. In trying the impeachment presented by the House we are complying with the requirements of the Constitution, through which alone the purity and integrity of the public service can be guarded and secured.

The suggestion which I desire to make in this connection, in order that a wrong impression may not go abroad, is that everything which looks to expedition of the impeachment trial should, so far as necessary and practicable, be in the nature of additional time given by the Senate to this work in the interval which now remains at our command, and that it should not be directed to the arbitrary abridgment of the necessary presentation of this case by the House of Representatives, performing as it does a high constitutional function in bringing and presenting to the Senate its case. If we desire that the impeachment trial shall close by Saturday, then the proper course is to give more time to it each day, so that the managers on the part of the House and the counsel for the respondent may have before them full time in which to fully present their respective cases to the Senate. We all know that this session must end at noon on the 4th of March and that we are limited in time by law; and the objection which I make to the suggestion of the Senator is not to his effort that we may by proper expedition in the disposition of the impeachment matter have sufficient time for the proper discharge of the important duties of another kind which devolve upon us. My objection is to the method proposed. I prefer that, instead of that, the direction should be given to this matter which will impose upon us, if it need be, additional labor by providing for additional time to be devoted to the trial each day, and that it be not disposed of by the suggestion of an arbitrary abridgment in the opportunity of the House of Representatives to present its case here, and of the time for the proper consideration by ourselves as to how this important matter shall be determined, and what final disposition shall be given to it.

Mr. STEWART. Mr. President, I should like to make one suggestion in regard to this matter. It is suggested that the Constitution restrains the Senate, and that to comply with the provisions of the Constitution no limitation should be put upon time. We have a constitutional right to trial by jury, we have a constitutional right to have cases heard by the courts, and the courts exercise in pursuance of that a reasonable discretion as to the time to be used. The Supreme Court of the United States have rules in regard to the time to be used in cases to be argued there, and in criminal proceedings the courts put a reasonable limit to the time to be allowed for argument. They have to facilitate a trial in order to comply with the Constitution at all.

Mr. SPOONER. Will the Senator allow me to ask him a question?

Mr. STEWART. Certainly.

Mr. SPOONER. Has the Senator ever known a court before which there was a criminal case to fix a limit of time within which limit testimony for the defense should be presented?

Mr. BACON. Mr. President, I hope we may have an opportunity to hear the Senator.

Mr. STEWART. I have known cases very frequently.

Mr. SPOONER. Of course, limiting the argument.

Mr. STEWART. I have known frequently when the court would say, "You must have your witnesses here to-morrow, so that we may get through with the case." It is necessary to do it in order to discharge the business of the court.

ADDITIONAL COPIES OF THE "JEFFERSON BIBLE."

The PRESIDENT pro tempore. The Senator from Maine [Mr. HALE] has sent to the desk a further resolution, which will be read.

The Secretary read as follows:

Resolved by the Senate, That 130 copies of House Document No. 775, Fifty-eighth Congress, second session, The Life and Morals of Jesus of Nazareth, be reprinted by photolithographic process from the same plates and bound in the same style for the use of the Senate, the cost of the same not to exceed \$500.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

Mr. GORMAN. I ask that the resolution just submitted to the Senate may be read again.

The PRESIDENT pro tempore. The resolution will be again read.

The Secretary again read the resolution.

Mr. GORMAN. I do not know who offered the resolution.

Mr. BLACKBURN. The Senator from Maine [Mr. HALE].

Mr. GORMAN. I wish to say that while I know there is a great demand for this work it must be remembered that the Government has been held to have no right to print these copies without paying the owner of the original work a dollar and a quarter a volume. I think the Senate Committee on Printing, which has had this matter under consideration, should consider the resolution, and I suggest to the Senator whether it had not better go to the Committee on Printing and have a report made.

Mr. HALE. Let me say that the question of a new edition does not enter into it.

Mr. GORMAN. It will be a new edition in this case, I wish to say to the Senator, and the publication can only be had from the original volume, for which we are to pay the owner a dollar and a quarter for each volume. It can not, in my judgment, come within the rule of the Senate limiting the cost of a publication to \$500. I suggest to the Senator to let the resolution go to the committee.

Mr. HALE. I wish to say in answer to the Senator that it is not an edition. It is simply to afford certain Senators their quota under the old act. It does not touch my own case, but certain Senators have not received and will not receive their quota because some books have disappeared. It is simply to cure that which has been done through the fault of no one of the officials in charge of the books. Inquiry has been made and it has found that of the old edition a small number, perhaps a hundred or more, can be printed inside of the limit of \$500. No new edition is required, and it enables such Senators who have not had their quota to get it. It does not give a volume to a Senator who has had his quota, and does not in any way suggest a new edition, but simply serves the Senators whose volumes have disappeared. It all comes within the limit of \$500.

Mr. GORMAN. I see the force of what the Senator says, but unless the Committee on Printing has been misinformed by the Public Printer I think the Senator is mistaken. We have had information in the other direction, and unless we pay to the owner of this volume one dollar and a quarter a volume it can not be done.

Mr. HALE. Does not the resolution in terms direct that the cost shall not exceed \$500?

The PRESIDENT pro tempore. It does.

Mr. GORMAN. It does.

Mr. HALE. I can assure the Senator that there will be no practical difficulty about it. All that matter has been looked into.

Mr. GORMAN. I will say to the Senator that the Committee on Printing has had that information.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

The resolution was considered by unanimous consent, and agreed to.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on Public Lands:

H. R. 11218. An act setting aside a certain island in Bartlett Lake, Minnesota, as a park and forest reserve; and

H. R. 18862. An act to provide for a land district in Yellowstone, Rosebud, and Carbon counties, in the State of Montana, to be known as the Billings land district.

H. R. 18751. An act to extend the time for the construction of a bridge across Rainy River by the International Bridge and Terminal Company was read twice by its title, and referred to the Committee on Commerce.

H. R. 18965. An act to revise and amend the tariff laws of the Philippine Islands, and for other purposes, was read twice by its title, and, on motion of Mr. Lodge, referred to the Committee on the Philippines.

H. J. Res. 217. Joint resolution to return to the proper authorities certain Union and Confederate battle flags was read twice by its title, and referred to the Committee on Military Affairs.

GOVERNMENT OF CANAL ZONE.

The PRESIDENT pro tempore. Under the unanimous-consent agreement, the Chair lays before the Senate House bill 16986.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 16986) to provide for the government of the Canal Zone, the construction of the Panama Canal, and for other purposes.

The Secretary resumed the reading of the bill at page 7, line 19, and read to line 24, on page 7.

Mr. McCOMAS. I rise to make an inquiry only. The bill is being read now to pass upon the committee amendments?

The PRESIDENT pro tempore. It is being read to pass upon the committee amendments.

Mr. McCOMAS. An amendment I offered and is pending will be in order thereafter?

The PRESIDENT pro tempore. It will.

The reading of the bill was resumed. The next amendment of the Committee on Inter-oceanic Canals was, in section 9 (6), page 10, line 21, after the word "upon," to strike out "reasonable" and insert "such;" and in line 22, after the word "party," to insert "as the court shall prescribe;" so as to read:

Evidence of the value of the property sought to be condemned may be presented by either party before the appraisers upon such notice to the opposite party as the court shall prescribe, and for this purpose the appraisers may subpoena witnesses and compel their attendance and compel the production of books and papers.

The amendment was agreed to.

The next amendment was, in section 9 (6), page 11, line 6, after the word "hearing," to insert "such notice as the court shall direct being first given to the opposite party;" so as to read:

Upon the filing of such report in court, the court shall, upon hearing, such notice as the court shall direct being first given to the opposite party, at a time and place to be fixed by the court, accept the same and render judgment in accordance therewith, or for cause shown, the court may recommit the report to the appraisers for further report of facts; or it may accept the report in part and reject or recommit in part, and may make such order and judgment as shall secure to the United States the title to the corporate stock and to the defendant or defendants just compensation for the property so taken and the title transferred and the judgment shall require payment to the defendant or defendants or into court of the amount fixed as compensation before the United States can appropriate said stock to the public use.

The amendment was agreed to.

The next amendment was, to insert as an additional section the following:

SEC. 7. That to enable the United States to secure at all times a sufficient supply of money to meet the necessities of the Government on said Canal Zone, the President is hereby authorized to deposit such sum of money as he may deem sufficient for said purposes, not to exceed \$1,500,000, of any sums appropriated for canal purposes, in some bank or banks in the United States having a fiscal agent on the Isthmus of Panama, to be selected by the President: *Provided*, That such deposit shall be on terms which shall preserve the title to said money in the United States, enable the United States to withdraw said funds from said deposit at any time, and proper and sufficient security be given by the bank of deposit for the return of said money or the lawful accounting therefor.

Mr. MORGAN. Mr. President, before we pass away from the sections that have just been read on the subject of condemning stock in this canal I wish to make a statement about the matter.

The sections of the bill numbered here 3 to 6, inclusive, were adopted in substance if not in exact form by the Committee on Inter-oceanic Canals, and reported here by the committee. The House at that time, having under consideration the bill we are now considering in the Senate, adopted those amendments. Am I correct about that?

Mr. KITTREDGE. Yes.

Mr. MORGAN. The House adopted those amendments. When those amendments were pending in the Committee on Inter-oceanic Canals I opposed them. My reasons for it were that I was not satisfied that we have the constitutional authority to condemn property of this kind, which is held under a

charter in New York, by an act of Congress. My opinion was that we ought to go to the State authorities of New York and prosecute this proceeding of condemnation in accordance with their laws; that the United States in its relation to this canal stock is only what we might call a private corporation. It has no sovereign power connected with its ownership of that stock at all. It is a mere corporator standing on the footing of all other corporators, and if the company or any of the corporators desire to proceed to have a portion of the stock of that railroad company condemned for the use of the company, my judgment is that the proper forum is in the courts of New York, and that that is not only our duty, but altogether a matter of due respect to the authorities of New York.

I have very great doubt as to whether such property as that can be condemned for public uses on the application of one of the corporators. The Panama Canal Company was chartered in the State of New York. That is an existing legal entity or being. It is not the Government of the United States, and not connected with it in any way, except that the United States has become the owner of the great majority of the stock of this corporation.

Now, if this corporation wants to condemn any of the stock for public uses the proceeding, it occurs to me, ought to be in the name of the corporation. That has been the rule always in those very unusual and extraordinary proceedings in which railroad corporations have prosecuted with success in some of the State courts propositions to condemn stock for the use of the company at large on the ground that thereby public uses were being subserved.

I have very serious doubt as to the authority of Congress to prosecute this proceeding in one of the United States courts in the name of the United States, and I wished before this matter passed away to state that I entertain those opinions and that I opposed this amendment in committee. I am not going to ask any division upon it here now, because I recognize the necessity of going through with this matter, as we are forced to do, in a hurry and without proper consideration. That is not the fault of anybody, as far as I know.

The next proposition upon the bill, which is contained in section 7, is entirely outside of my course of studies, and I do not clearly understand the advantage or value of it at all. It has not been yet read, but it will be read presently; and while I am on the floor I thought I would merely state that I ask some explanation of some member of the committee or some Senator who can point out the necessity of the Government of the United States putting \$1,500,000 in some bank with an office or agency or a branch in the Canal Zone in order to facilitate the financial or fiscal operations of the United States in paying for material and labor and the like of that. I do not see why it is that the Government of the United States must go to a bank to do that. I do not see why the credit of the United States needs any reinforcement by the credit or capital of any bank. I do not see why we can not put this money into the hands of a paymaster of the Army, where it belongs, and have it disbursed under the laws and rules and regulations which control disbursements in the Treasury Department, and I wish some one would explain it to me.

I am making no point upon these amendments against them in stating my objection so as to raise any question about them, because the House has taken the proposition of the Senate and voted it into the bill, and I do not feel authorized to antagonize the vote of the House.

The PRESIDING OFFICER (Mr. KEAN in the chair). The next amendment reported by the committee will be stated.

The SECRETARY. The next amendment reported by the Committee on Inter-oceanic Canals is on page 12, after line 24, to add as a new section the following:

SEC. 7. That to enable the United States to secure at all times a sufficient supply of money to meet the necessities of the Government on said Canal Zone, the President is hereby authorized to deposit such sum of money as he may deem sufficient for said purposes, not to exceed \$1,500,000, of any sums appropriated for canal purposes, in some bank or banks in the United States having a fiscal agent on the Isthmus of Panama, to be selected by the President: *Provided*, That such deposit shall be on terms which shall preserve the title to said money in the United States, enable the United States to withdraw said funds from said deposit at any time, and proper and sufficient security be given by the bank of deposit for the return of said money or the lawful accounting therefor.

The PRESIDING OFFICER. The question is on the amendment which has just been read. Without objection, it will be regarded as agreed to.

Mr. KITTREDGE. Mr. President, the committee have two clerical amendments to suggest. The first is on page 6, line 8, after the word "be," in line 7, to strike out "turned" and insert "covered."

The PRESIDING OFFICER. The amendment proposed by

the Senator from South Dakota on behalf of the committee will be stated.

The SECRETARY. On page 6, section (4) 2, after the word "be," in line 7, it is proposed to strike out "turned" and insert "covered;" so as to read:

All income at any time received by the United States from rentals, dividends, or otherwise in respect of any property now possessed or hereafter acquired in connection with the canal, the railroad, or other works, shall be covered into and credited to the fund for the construction of said canal and works.

The amendment was agreed to.

Mr. KITTREDGE. On behalf of the committee, on page 7, line 4, after the word "necessity," I move to strike out "requires" and insert "require."

The PRESIDING OFFICER. The amendment proposed by the Senator from South Dakota will be stated.

The SECRETARY. On page 7, section (6) 3, line 4, after the word "necessity," it is proposed to strike out "requires" and insert "require;" so as to read:

And whereas the public use and necessity require for the accomplishment of the public work, etc.

The amendment was agreed to.

Mr. KITTREDGE. Mr. President, the committee have no further amendment to propose.

Mr. McCOMAS. I now move to insert the amendment which I offered last evening, to come in at the end of section 2 of the bill reported by the committee.

The PRESIDING OFFICER. The amendment will be stated.

Mr. MORGAN. Mr. President, I suggest that no action has been taken on the last section of this bill, which is the committee amendment to insert section 7.

The PRESIDING OFFICER. The Chair will consider that an open question if the Senator so desires.

Mr. MORGAN. I did not hear any question put upon that amendment.

The PRESIDING OFFICER. Does the Senator desire to have the question put?

Mr. MORGAN. There ought to be some explanation of it. I want to understand, if I can, why there is any necessity for putting a million and a half dollars in a bank to reinforce the credit of the United States or to facilitate the payment of money. It seems to me like a proposition to pick up some favorite bank and to make it the fiscal agent of the United States in the Canal Zone. That is the appearance it has to me; and I want some Senator who, perhaps, does understand it to give us some information about it.

Mr. McCOMAS and Mr. KITTREDGE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized. Does he yield to the Senator from South Dakota?

Mr. McCOMAS. I yield.

Mr. KITTREDGE. Mr. President, the explanation of that amendment, in the judgment of the committee, is that in order to meet the necessities of the government of the Canal Zone it was wise to have this deposit authorized. Under present conditions, if the Government require money, as they do, to pay the employees upon the zone, it is necessary to go to some local bank in Panama and secure the necessary coin to make such payment. This simply authorizes the President, in his discretion, to deposit a sum of money, not exceeding one million and a half of dollars, of any sums appropriated, in some bank of the United States, to facilitate the securing of the necessary coin to pay employees.

Mr. MORGAN. Well, Mr. President, I do not think that explanation at all explains the proposition. We have paymasters in the Army, well secured by bond, amply supplied with all necessary regulations and power to transmit money to the Army at any place in the world, and to pay it out as it may be required. There is an ample provision which the President may avail himself of for paying any debt that we may happen to owe in the Isthmus. I do not see how it is that this money must be deposited—a million and a half dollars—and remain on deposit in a bank in the United States, so that that bank, through its agents in the Canal Zone, can furnish us with a supply of money there.

How does the bank get its money down there? It must be by transporting it in some way and keeping it deposited there. Why can not the paymasters of the Army do that? What is the occasion for having a million and a half of the Treasury of the United States locked up on deposit in a bank to support and sustain the credit of the United States in respect of paying its installments of money to laborers and operatives there, or anything of the kind?

I have not yet heard any explanation of the necessity of the proposition; and I am very much inclined, Mr. President, to think that the purpose of this amendment must necessarily be to give a privilege or advantage to some bank selected by the

President of the United States to conduct the fiscal operations of the Government in that Zone. I see no necessity for that. We have got to pay commissions on that, or else we have got to lose interest on the deposits. Why do we segregate a million and a half dollars and hold it up for a purpose like this, when the Government of the United States finds no difficulty in paying its troops anywhere in the world that it may choose to send them? It found no difficulty in paying our army in China, when it was over there protecting our interests in Peking. Really I can not see that there is anything else in it but just that.

I am disposed, Mr. President, so far as I may be permitted to have any voice in this matter at all, to try to prevent jobs and arrangements for the benefit and advantage of private people. There is enough of that going on; and we have got to be guarded and careful about the handling of money in connection with this canal; otherwise we shall find ourselves in a very serious condition about it. I do not want any unnecessary opportunities for scandals to be connected with this canal in the early days of its institution down there and in the work to be done.

I object to the amendment because I do not understand the necessity for it, and I ask the Chair to put the question to the Senate on the amendment.

Mr. McCOMAS. I ask that my amendment may be acted on.

The PRESIDING OFFICER. The Chair will first put the question on agreeing to the amendment reported by the committee, to add to the bill a new section, to be known as section 7. [Putting the question.] The ayes appear to have it.

Mr. MONEY. Mr. President, before the Chair decides on the adoption of the amendment, I should like to have the amendment read.

The PRESIDING OFFICER. The amendment will be again stated.

The SECRETARY. At the end of the bill the committee report an amendment, to insert as a new section the following:

SEC. 7. That to enable the United States to secure at all times a sufficient supply of money to meet the necessities of the Government on said Canal Zone, the President is hereby authorized to deposit such sum of money as he may deem sufficient for said purposes, not to exceed \$1,500,000, of any sums appropriated for canal purposes, in some bank or banks in the United States having a fiscal agent on the Isthmus of Panama, to be selected by the President: *Provided*, That such deposit shall be on terms which shall preserve the title to said money in the United States, enable the United States to withdraw said funds from said deposit at any time, and proper and sufficient security be given by the bank of deposit for the return of said money or the lawful accounting therefor.

Mr. McCREARY. I desire to ask the Senator from South Dakota a question. I notice in the first section, as it is now, of the bill this provision:

All the military, civil, and judicial powers of the United States in the Canal Zone at Panama, * * * are vested in such person or persons, and shall be exercised in such manner, as the President shall direct, etc.

There is a Panama Commission at present, and I ask the Senator from South Dakota what becomes of the existing Panama Commission under this bill?

Mr. KITTREDGE. Mr. President, while the matter directly under consideration is the adoption of section 7, which the committee propose to add to the bill, I am very happy to answer the Senator's question at the present time. If the bill as it is proposed to be amended passes the Senate, the Commission as established by the act of June 28, 1902, remains unchanged.

Mr. McCREARY. The Commission, then, remains unchanged?

Mr. KITTREDGE. Yes, sir.

Mr. McCREARY. And will be entitled to such salaries as the President, in his discretion, may allow them?

Mr. KITTREDGE. The Senator is correct, Mr. President.

Mr. GORMAN. Mr. President, only a word in regard to section 7, authorizing the deposit, not to exceed \$1,500,000, of any sums appropriated for canal purposes, which has been commented on by the Senator from Alabama [Mr. MORGAN].

As a member of the committee I agreed to the insertion of this section of the bill, because in the operations of the Departments of the Government in all of our payments in foreign countries, etc., we have, as a matter of convenience, selected some bank or banks in the United States to transmit funds abroad. That system has also been applied to the Philippines, and has been found to be a matter of very great convenience. Therefore a similar provision is incorporated in this section.

It is true that it will inure greatly to the benefit of whatever bank may be selected by the Government as such depository; of that I have no doubt. But, as I have stated, that has been the general policy heretofore. Of course, in exchange and in a great many other ways it will be a matter of profit to the bank so selected.

Mr. MORGAN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Alabama?

Mr. GORMAN. With pleasure.

Mr. MORGAN. May I ask the Senator whether it has been the policy of the Government heretofore observed to deposit money in those banks which have been selected as fiscal agents?

Mr. GORMAN. I so understand.

Mr. MORGAN. Without interest?

Mr. GORMAN. I think without interest. I do not know of any case where interest has been charged. This has been the policy of the Government as to all funds which it has been found necessary to use abroad; it certainly has been the established policy in the Philippines and also in Cuba. I do not think that the Government can possibly lose anything in this matter, provided the securities are sufficient.

The profit, however, will probably be very great to the bank which shall be selected, growing out of this system into which we have entered. It will, I have no doubt, facilitate very much the payment of laborers employed in the construction of the canal on the Isthmus, where otherwise such payment might be considerably delayed. In the case of their death from yellow fever or from some other disease, payment to their legal representatives will in this manner also be very much facilitated. I do not think there is anything more than that involved in the matter. It is one of the incidents arising out of the construction of the canal.

I want to say a word or two in reply to what was yesterday suggested by the senior Senator from Texas [Mr. BAILEY] as to the Government ownership of the Panama Railroad. I am as much opposed as the Senator from Texas or the Senator from Colorado [Mr. TELLER] can be to the Government ownership of transportation lines. Such a proposition can not at any time meet with my approval. But the ownership of this road on the Isthmus was acquired under the treaty which we made with Panama. It is an absolute necessity to have the railroad, and to have its exclusive operation, if the canal is to be constructed with economy and in any sort of reasonable time. It is as much a facility as is the mechanism to dig out the prism of the canal.

Mr. SPOONER. And if there had been no railroad there the Government would have been obliged to build one.

Mr. GORMAN. Unquestionably; and that would have been so whether the canal was to be built at Panama or at Nicaragua. So the question of the ownership by the Government of railroads, of ordinary transportation facilities in the United States, has no relation whatever to the project that is before us, while the question of the ownership of the isthmian railroad was determined when we ratified the treaty; and there has never been any means of escape from it.

Now, there is a minority holding of the stock of that railroad. There ought never to have been. That is one of the matters concerning which I think I have a perfect right to say that some of us who opposed the project in the form in which it originally came insisted at the time that whenever we acquired the right to construct the canal and the majority of the stock of the railroad we should have insisted upon having a complete transaction as to both. If we are to have the entire control of that stock, we can not escape by pursuing any other method than that which is provided for in this bill, by the condemnation of the property itself upon the Isthmus, for the reason that we are under treaty obligations to maintain that road for a series of years and to pay \$250,000 annually to Panama for its interest in it. It was therefore thought—and it is a matter of demonstration—that the only way in which the object can be attained is by the method provided in this bill. It is, I am told by the lawyers who have examined it, a very extraordinary proceeding; yet it is said that the matter is amply provided for under the laws of New York, under which this railroad corporation was chartered.

Mr. President, there is no doubt about the power. It has heretofore been exercised by the United States, and it can acquire the stock at a fair price. But that is a matter that I am not now discussing.

Referring to the powers contained in this bill, I want to call the attention of the Senator from Kentucky [Mr. McCREARY] to the fact that the public act approved April 28, 1904, which is the act upon which this canal is now being constructed—

Mr. TELLER. 1904?

Mr. GORMAN. Yes; the act approved April 28, 1904, which contains the identical language used in the first section of the bill before us. There is no enlargement, as I understand, of the powers of the President. It leaves the construction of the canal precisely as provided for in what is known as the "Spooner Act," and in the act to which I have just referred. That act expires with this Congress, and this bill simply extends the time, under the identical terms of the present law, until the expiration of the session beginning December next. It goes one step

beyond that, and provides what was not provided for in the former acts, that estimates shall be submitted to the President of the United States annually, and oftener if Congress desires it, and transmitted to Congress in detail; and that hereafter, that is to say, after 1906, no amount of money shall be taken from the Treasury on account of this work unless it shall be appropriated by Congress.

The appropriations heretofore made were in lump sums; no report in detail was required; and no action of Congress was necessary to get the money out of the Treasury. This act goes back to the true principle and says that after 1906 the general appropriation that we have already made shall not be applicable except upon estimates submitted to Congress and appropriations made by Congress.

Mr. McCREARY. Mr. President, it is on that point that I wish to ask the Senator from Maryland a question. The section says:

That until the expiration of the session of the Fifty-ninth Congress, beginning the first Monday of December, 1905, unless other provision be sooner made by Congress, etc.

I desire to ask the Senator from Maryland if only one session is allowed to intervene, does he think that will be sufficient in this case?

Mr. GORMAN. Mr. President, that was the opinion of the committee, who thought it was unwise to extend the time beyond that. This provision is identically the same as the one now in force, which I will read to the Senator:

SEC. 2. That until the expiration of the Fifty-eighth Congress—

Which will be the 3d day of next month—

unless provision for the temporary government of the Canal Zone be sooner made by Congress, all the military, civil, and judicial powers as well as the power to make all rules and regulations necessary for the government of the Canal Zone and all the rights, powers, and authority granted by the terms of said treaty to the United States shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone, etc.

It is believed by the Secretary of War, and by the committee as well, that there is ample time between now and next December to perfect a general act, because it will be remembered that the President at this session of Congress has sent us a special message upon this subject, asking, in fact, that the present Commission be abolished and that he be permitted to appoint five, or preferably three, commissioners and undo the whole work, practically, that was provided for in the original act, known as the "Spooner Act," all of which is a very large and important question. We considered that between now and the expiration of the next session we could frame a much better act than could be prepared at this time, and that such an act could then be passed by Congress.

That is all there is of the bill. I see the Senator from Texas [Mr. BAILEY] is here, and I want to repeat in his presence what I said a moment ago, that while the acquisition of this railroad was provided for in the original act and in the treaty itself, I do not consider myself by any means committed in any way to the proposition looking to the governmental ownership of railroads. I agree with the Senator from Texas and with the Senator from Colorado upon that point, but this is a unique and special case; and now that the treaty has been ratified and the road already acquired we simply want to perfect the present conditions.

Mr. BAILEY. Mr. President, I understand the Senator from Maryland and other Senators, in reporting this proposition, only go so far as to say that they will there acquire a railroad which the Government needs to use as an agency in doing some governmental work?

Mr. GORMAN. Yes.

Mr. BAILEY. I unhesitatingly say that that is sound doctrine; and, of course, the Senator from Maryland will understand that I meant no criticism—

Mr. GORMAN. Oh, no.

Mr. BAILEY. Against him or the committee. Whatever I said in relation to the general subject of governmental ownership and operation of railroads was in reference to a question submitted by the junior Senator from Colorado [Mr. PATTERSON].

Mr. GORMAN. No, Mr. President, I did not understand it as a criticism; but as the matter which the Senator from Texas suggested is so important, as it now confronts us, and will come, as a matter of course, with great force a little later on, I could not let the occasion pass without saying to him that I agree with him thoroughly upon the general proposition.

Mr. PATTERSON. Mr. President, expression of personal views as to the governmental ownership of railroads seems to be quite in order, and I want to say that for myself I do not regard such Government ownership as an unmixed evil by any means, but I am rather glad that the Government has got pos-

session of the Panama Railroad, whether by treaty or otherwise, for the reason that in the ownership of the road the Government must operate it as a corporation would operate a railway, and it can not be transformed by the Government into a mere instrument with which to assist in the construction of the Panama Canal. Under the franchise by which the railroad was constructed it must be kept open for public use. Both passengers and freight must be transported over it as any other railway is required to transport them.

I am pleased that the Government has possession of this railway under such circumstances for another reason. It will enable the Government, if it will, to demonstrate in some degree with it what the evil or the good is in the management of railroads by the Government.

The Senators who have spoken upon the question have borne testimony to the marked increase of sentiment in the United States for the Government ownership of railroads. I believe, Mr. President, that if Congress years and years ago had taken the stand that the President now asks Congress to take, and through courts and law officers of the Government these great quasi public corporations had been compelled to deal justly with the people, the sentiment in behalf of governmental railroads that now confronts both Members of the House of Representatives and Senators, while it might exist in some degree, would not be nearly so acute.

Mr. President, it hardly does justice to the President to say that he is a student of any other man on this great subject of transportation, whether of Mr. Bryan or of anybody else. Both Mr. Bryan and the President have been scholars in the great school of public opinion. They may have sat upon the same benches. They have certainly listened to the same teachers, and they have been made to realize what wrong the public have been compelled to endure through railroad injustice and what the remedy is.

The truth is, if the great railway combinations of the country would only realize it, that the President in his message to Congress has done more to check the growth of sentiment in the United States in favor of Government ownership of railways than have all the preachments of railway presidents and attorneys and railway journals of the country combined. Public sentiment in favor of Government ownership is a necessary outgrowth of the evils attendant upon private railway ownership and the manner in which that private ownership has been exercised. If under the leadership of President Roosevelt those evils shall be appreciably mitigated, if the matter of discrimination as between shippers and localities and sections, and if the gross injustice and inequalities in transportation rates shall be remedied by Congress through the agency of the Interstate Commerce Commission, sitting both as a Commission and a court, or by the Commission with the aid of a court, then much will be accomplished toward arresting the growth of this sentiment in favor of public ownership.

As a distinguished gentleman outside of this Chamber has said, and said strongly and eloquently, the people of this country have made up their minds that unless the railroads go out of the government business the Government will go into the railroad business; and the Government will see that these great public corporations are conducted, if the courts must interfere, so that while profits may go into the pockets of the stockholders, the railways shall not discriminate so as to destroy the business of one man and build up the business of another, and so as to destroy the prosperity of one locality or one city or one town and enhance the prosperity of others.

Government ownership has been magnified into a bugaboo. It is not socialism any more than is the transportation of the mails by the Government of the United States or the transportation of packages and the delivery of them to their owners by the Government. Our Agricultural Department, under almost every test that can be applied to socialism—not after the teachings of Karl Marx, but as socialism is generally understood by intelligent people—is nothing less than a great governmental institution, managed and controlled in the spirit of socialism.

I do not believe, Mr. President, that a great question like this is to be put down by an epithet or the misapplication of a name or the misunderstanding of a term. Next to education transportation is the burning question with the people of the United States, and it is as great a factor in the civilization of the country and in its permanent advancement and prosperity as is education itself. It is not so long since, Mr. President, when the transportation of the world was dependent upon the wind and the ox cart; and within the lives of Senators upon this floor the only means of transportation were sails upon rivers and oceans and lakes and the ox cart or the wagon and the horse on the land.

While such was the case, the question of government control of transportation was not nearly so important to the people as it is now. But with the tremendous powers and the tremendous wealth which the ownership of great steam lines of transportation, both on land and by sea, have concentrated in the hands of the few, transportation has become as great and as tremendous a question in the domestic, commercial, industrial, and intellectual life of the country as are the common schools, the churches, the colleges, or anything else that is essential to the well-being of the people.

So far as I am concerned, I do not now advocate Government ownership; but unless these great public corporations, Mr. President, once numbered by the thousands, but with their holdings now concentrated into eight or nine great systems, and these great systems combined so as to destroy competition, so as almost to defy the powers of Government, shall learn the lesson that the agitation lately so greatly accelerated by the President is intended to teach, the sentiment for public ownership will grow and increase in strength and intensify until Congress will yield to that sentiment, as the House was compelled to do a few days ago, and as the Senate ultimately will be compelled to do. The House and the Senate, after all, are supposed to represent public opinion, and when public opinion becomes so strong that private interests will be overborne, as it can and has often demonstrated its ability to do, then will come either Government ownership or the enforcement of the right of the Government to control these great lines of transportation. It will be either Government ownership or the elimination of discrimination and unjust rates from railroad management under the guidance of the Government.

For that reason, Mr. President, I am glad that the Government owns a line of railway. I am glad it owns it under such circumstances that it must be a common carrier for such passengers and freights as may be offered; and the Government can, if it will, make it a tremendous factor, as great a factor as the power to fix rates conferred on anybody can be, in holding the great transcontinental lines within the limits of justice in their dealings with the people and the commerce that emanates from them.

Mr. CARMACK. Mr. President, I think the Senator from Colorado [Mr. PATTERSON] is entirely mistaken if he supposes that the operation of this railroad by the Government will furnish any object lesson whatever with respect to the practicability of Government ownership of railroads. The Panama Railroad is not to be owned and operated by the Government as a common carrier, but chiefly as an instrumentality of Government in the performance of Government work in the construction of the canal. Its character as a common carrier will be subordinated entirely to that object, and it will furnish no object lesson whatever, in my judgment, as to the practicability, or feasibility of Government ownership.

Mr. PATTERSON. May I ask the Senator from Tennessee a question?

Mr. CARMACK. Certainly.

Mr. PATTERSON. Is it the theory of the Senator from Tennessee that when the outstanding shares of stock have been condemned and become the property of the Government, the Government will stop the use of the Panama Railway as a common carrier and use it merely as an adjunct to the Panama Canal?

Mr. CARMACK. I say its character as a common carrier will be subordinate to its character as an instrumentality of government for the construction of the canal.

Mr. PATTERSON. It may be made subordinate, but it must be a common carrier or else it would have to go out of business.

The PRESIDENT pro tempore. The question is on agreeing to the amendment reported by the committee.

The amendment was agreed to.

Mr. McCOMAS. I ask that my amendment may be stated. It is to be added to section 2.

Mr. MONEY. What is the amendment, Mr. President?

The PRESIDENT pro tempore. It will be read.

The SECRETARY. On page 6, at the end of section 2, it is proposed to insert the following:

That vessels of the United States, or vessels belonging to the United States, and no others, shall be employed in the transportation by sea from the United States of all materials, supplies, machinery, and equipment employed on, or used for, the Panama Railroad, or for the construction and operation of the canal across the Isthmus of Panama, and each contract for such articles shall provide specifically for transportation by vessels of the United States, and vessels of the United States or belonging to the United States and no others shall be employed in the return by sea to the United States of such materials, supplies, machinery, and equipment, unless the President shall find that the rates of freight charged by such vessels are excessive and unreasonable or that vessels of the United States or belonging to the United States are not available for prompt service: *Provided*, That no greater

charges be made by such vessels for transportation of such articles for the use of the Panama Railroad or the construction and operation of the canal across the Isthmus of Panama than are made by such vessels for the transportation of like goods for private parties or companies.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from Maryland.

Mr. McCOMAS. Mr. President, I hope the amendment will be accepted, as it is in the exact terms of the provision reported from the Committee on Commerce, and that is identical with the requirement that American ships shall haul supplies for the Army and Navy unless the President deems their charges excessive. I should like to have the amendment pending, if there is to be opposition to it, because I think the same Senate which has required that supplies for the Army and Navy shall be carried in American bottoms will declare that supplies for the canal shall be transported in American bottoms. I should like to have an opportunity to have the amendment pending.

The PRESIDENT pro tempore. The amendment is now before the Senate.

Mr. MONEY. I move to lay the amendment on the table.

The PRESIDENT pro tempore. The Senator from Mississippi moves to lay the amendment on the table.

Mr. GALLINGER and Mr. McCOMAS called for the yeas and nays, and they were ordered.

Mr. KITTREDGE. As the hour of 2 o'clock has about arrived, I ask unanimous consent that immediately upon the completion of the proceedings in the Swayne impeachment trial this evening the Senate shall proceed with the consideration of the pending bill.

Mr. STEWART. I am willing that unanimous consent shall be granted to that effect for this evening, but after that I shall insist that the Indian appropriation bill shall have the right of way.

The PRESIDENT pro tempore. The Senator from South Dakota asks unanimous consent that the unfinished business be temporarily laid aside at the adjournment of the Senate sitting as a court of impeachment, and that the Senate proceed with the consideration of this bill. Is there objection? The Chair hears none, and that order is made.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The PRESIDENT pro tempore. The hour of 2 o'clock has arrived, to which the Senate sitting as a court of impeachment adjourned. The Senator from Connecticut will please take the chair.

Mr. PLATT of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. PLATT of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne Tuesday, February 21.

The PRESIDING OFFICER. The Presiding Officer is informed that a witness has been discharged both by the managers and by counsel whom some Senators desire to have recalled—Mr. Blount. If there be no objection, the Sergeant-at-Arms will telegraph for him and endeavor to intercept him and have him come back.

Mr. THURSTON. Mr. President, the respondent has at all times insisted, and still does insist, upon the pleas to the jurisdiction as to the first seven counts. It had been the purpose of my associate, Mr. Higgins, to present our statement and arguments with respect to those pleas as a part of his opening statement. In deference to the evident wish of the Senate and to the imperative demand for the completion of the legislative duties of the Senate, he decided to waive that privilege.

We have prepared a statement and argument as to those pleas to the jurisdiction which we could, of course, use on the final arguments in the case. But we feel it would be fairer to the Senate and to the managers to present those now, and as our position upon the pleas to the jurisdiction and as a part of

our presentation of the case we now ask to present our statement and argument and have it printed in the Record, so that the Senate and the managers may have an opportunity before the close of the case to consider it. [To the managers on the part of the House.] Is there any objection?

Mr. Manager PALMER. We do not object.

Mr. THURSTON. We present it and ask that it go in as a part of the record without taking the time to read it.

The PRESIDING OFFICER. The brief prepared by counsel on the question of jurisdiction as to the first seven articles will be inserted in the Record unless there be objection on the part of the managers or of Senators.

Mr. THURSTON. Mr. President, I feel it is our duty to state that this presentation of the historical, constitutional, and parliamentary procedure in impeachment proceedings has been prepared not by counsel for respondent, whose names are attached to it, but by a gentleman who is renowned as a scholar along constitutional lines and a lawyer of great ability, and without naming him we wish to disclaim any credit that may attach to the preparation of this document.

Mr. Manager PALMER. I should like to understand exactly what this document, which is very formidable in character and nature, purports to be. There are some forty-eight pages. We now have a couple of copies of it. It is the first time we have seen a copy of it. I should like to ask counsel what it amounts to.

Mr. THURSTON. It is the argument in support of our pleas.

Mr. Manager PALMER. Are you demurring to the first seven articles of impeachment upon the ground that they do not charge an impeachable offense? Is that the idea?

Mr. THURSTON. Our pleas are in to that effect, if the manager has read them.

Mr. Manager PALMER. Exactly. I understand you are filing a demurrer to the first seven articles on the ground that they do not charge impeachable offenses.

Mr. THURSTON. We did interpose special pleas to those articles.

Mr. Manager PALMER. And this argument is intended to support those pleas?

Mr. THURSTON. Yes, sir.

Mr. Manager PALMER. Of course your demurrer admits the truth of all that is stated in those articles.

Mr. THURSTON. I beg pardon.

Mr. Manager PALMER. It could not be a demurrer if it did not.

Mr. THURSTON. I beg pardon, Mr. President. We have not demurred. Our pleas stand, and the manager can take any legal view of them that he chooses to present.

Mr. Manager PALMER. All right; I simply want to understand what you are driving at.

The argument referred to is as follows:

In the Senate of the United States sitting as a court of impeachment. The United States of America against Charles Swayne, a judge of the United States, in and for the northern district of Florida. Upon articles of impeachment presented by the House of Representatives.

Argument in support of the pleas to the jurisdiction interposed in behalf of the respondent to articles 1, 2, 3, 4, 5, 6, and 7, such pleas presenting the contention that the facts set forth in said articles, even if true, do not constitute impeachable high crimes and misdemeanors as defined in the Constitution of the United States.

I. WHAT ARE IMPEACHABLE "HIGH CRIMES AND MISDEMEANORS," AS DEFINED IN ARTICLE II, SECTION 4, OF THE CONSTITUTION OF THE UNITED STATES?

By a strange coincidence, the death of parliamentary impeachment, as a living and working organ of the English constitution, synchronizes with its birth in American constitutions, State and Federal. Leaving out of view the comparatively unimportant impeachment of Lord Melville (1805), really the last of that long series of accusations by the Commons and trials by the Lords, which began in the fiftieth year of the reign of Edward III (1376), was the case of Warren Hastings, who was impeached in the very year in which the Federal Convention of 1787 met at Philadelphia. Before that famous prosecution, with its failure and disappointment, drew to a close, the English people resolved that the ancient and cumbrous machinery of parliamentary impeachment was no longer adapted to the wants of a modern and progressive society. But before this ancient method of trial thus passed into desuetude in the land of its birth, it was embodied, in a modified form, first in the several State constitutions and finally in the Constitution of the United States.

Article II, section 4, of the Federal Constitution provides that "the President, Vice-President, and all civil officers of the

United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Article I, section 2, provides that "the House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment." Article I, section 3, provides that "the Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Article III, section 2, provides that "the trial of all crimes, except in cases of impeachment, shall be by jury."

II. PROVISIONS BORROWED FROM THE ENGLISH CONSTITUTION.

Mr. Bayard said in his argument in Blount's trial (Wharton's St. Tr., 264): "On this subject, the convention proceeded in the same manner it is manifest they did in many other cases. They considered the object of their legislation as a known thing, having a previous definite existence. Thus existing, their work was solely to mould it into a suitable shape. They have given it to us, not as a thing of their creation, but merely of their modification. And therefore I shall insist that it remains as at common law, with the variance only of the positive provisions of the constitution. * * * That law was familiar to all those who framed the constitution. Its institutions furnished the principles of jurisprudence in most of the States. It was the only common language intelligible to the members of the convention."

A recent writer of note, speaking on the same subject, has said: "If we examine the clauses of the Constitution, we perceive at once that the phraseology is applied to a method of procedure already existing. 'Impeachment' is not defined, but is used precisely as 'felony,' 'larceny,' 'burglary,' 'grand jury,' 'real actions,' or any other legal term used so long as to have acquired an accepted meaning, might be. The Constitution takes impeachment as an established procedure, and lodges the jurisdiction in a particular court, declaring how and by whom the process shall be put in motion, and how far it shall be carried. They have given to us a thing not of their creation, but of their modification. To ascertain, then, what this established procedure was, what were, at the time of the constitutional convention, impeachable offenses, we must look to England, where the legal notions contained in the clauses quoted had their origin." (American Law Review, vol. 16, p. 800. Article by G. Willett Van Nest.) Madison, in No. 65 of the Federalist, said: "The model from which the idea of this institution has been borrowed pointed out the course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment and of the House of Lords to decide upon it. Several of the State constitutions have followed the example."

III. HIGH CRIMES AND MISDEMEANORS AS DEFINED IN ENGLISH PARLIAMENTARY LAW.

The English Parliament as a whole has always been considered and styled "The high court of Parliament," which is governed by a single body of law peculiarly its own. As Sir Thomas Erskine May (Parl. Prac., pp. 71 and 72) has well expressed it: "Each house, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by a separate right peculiar to each, but solely by virtue of the law and custom of Parliament." In the words of Lord Coke (4 Inst., 15), "As every court of justice hath laws and customs for its direction—some the civil and canon, some the common law, others their own peculiar laws and customs—so the high court of Parliament hath also its own peculiar law, called the *lex et consuetudo parliamenti*." Blackstone (Bk. I, 163) in commenting upon the statement of Coke, that the law of Parliament, unknown to many and known by few, should be sought by all, observes that, "It is much better to be learned out of the rolls of Parliament and other records and by precedents and continual experience than can be expressed by any one man." Chitty, in commenting upon the statement of Blackstone, has said:

"The law of Parliament is part of the general law of the land, and must be discovered and construed like all other laws. The members of the respective houses of Parliament are in most instances the judges of that law; and, like the judges of the realm, when they are deciding upon past laws, they are under the most sacred obligation to inquire and decide what the law

actually is, and not what, in their will and pleasure, or even in their reason and wisdom, it ought to be. When they are declaring what is the law of Parliament their character is totally different from that with which, as legislators, they are invested when they are framing new laws; and they ought never to forget the admonition of that great and patriotic Chief Justice, Lord Holt, viz, 'that the authority of the Parliament is from the law, and as it is circumscribed by law, so it may be exceeded; and if they do exceed those legal bounds and authority their acts are wrongful, and can not be justified any more than the acts of private men.' 1 Salk, 505." (Chitty's Blackstone, vol. 1, p. 119, note 21.) It has always been conceded that the phrase "other high crimes and misdemeanors," embodied in Article II, section 4, of the Constitution of the United States, must be construed in the light of the definitions fixing its meaning in the parliamentary law of England as that law existed in 1787. The construction then given to the phrase in question was incorporated into our Federal Constitution as a part of the phrase itself, which is unintelligible and meaningless without such construction. The following elementary principles (as stated by Hon. William Lawrence, in the brief prepared by him for use in the trial of Andrew Johnson, Vol. I, pp. 125, 136), seem upon that occasion, to have passed unchallenged:

"As these words are copied by our Constitution from the British constitutional and parliamentary law, they are, so far as applicable to our institutions and condition, to be interpreted not by English municipal law but by the *lex parliamentaria*. * * * Whatever 'crimes and misdemeanors' were the subject of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution. * * * 'Treason, bribery, and other high crimes and misdemeanors' are, of course, impeachable. Treason and bribery are specifically named, but 'other high crimes and misdemeanors' are just as fully comprehended as though each was specified. The Senate is made the sole judge of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge. * * * Now, when the Constitution says that all civil officers shall be removable on impeachment for high crimes and misdemeanors, and the Senate shall have the sole power of trial, the jurisdiction is conferred and its scope is defined by common parliamentary law."

While the Senate sitting as a court of impeachment is the sole and final judge of what impeachable "high crimes and misdemeanors" are, no arbitrary discretion so to determine is vested. The power of the court simply extends to the construction of the phrase in question as defined in English constitutional and parliamentary law as it existed in 1787. That is made plain by Story in his Commentary on the Constitution, section 797, when he says: "Resort then must be had either to parliamentary practice, and the common law, in order to ascertain what are high crimes and misdemeanors; or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law."

IV. A RULE OF CONSTITUTIONAL CONSTRUCTION AS DEFINED BY THE SUPREME COURT OF THE UNITED STATES.

The fundamental principles of English constitutional law were first reproduced in the constitutions of the several States. In the light of the construction put upon them there, they were embodied, so far as applicable and desirable, in the Constitution of the United States. Thus the Federal Supreme Court was called upon at an early day to interpret the immemorial formulas or "terms of art" through which the cardinal principles of English constitutional law were incorporated in our governmental systems, State and Federal. The uniform rule for construing such formulas or "terms of art" adopted at the outset has been continued in force until the present time. When, in the trial of Aaron Burr, Chief Justice Marshall was called upon to construe Article III, section 3, of the Constitution, which provides that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort," he said, "What is the natural import of the words 'levying war?' and who may be said to levy it? * * * The term is not for the first time applied to treason by the Constitution of the United States. It is a tech-

nical term. It is used in a very old statute of that country whose language is our language and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it. So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is therefore reasonable to suppose, unless it be incompatible with other expressions of the Constitution, that the term 'levying war' is used in that instrument in the same sense in which it was understood in England and in this country to have been used in the statute of twenty-fifth of Edward III, from which it was borrowed." (Burr's Trial, vol. 2, pp. 401, 402.)

When in the case of *Murray v. The Hoboken Land Co.* (18 How., 272) it became necessary for the Supreme Court to construe the formula "due process of law," as embodied in the fifth amendment, Mr. Justice Curtis, speaking for the court, said: "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words 'by the law of the land' in Magna Charta. Lord Coke, in his commentary on those words (2 Inst., 50), says they mean due process of law. The constitutions which had been adopted by the several States before the formation of the Federal Constitution, following the language of the Great Charter more closely, generally contained the words 'but by the judgment of his peers, or the law of the land.' The ordinance of Congress of July 13, 1787, for the government of the territory of the United States northwest of the river Ohio, used the words."

When in the case of *Davidson v. New Orleans* (96 U. S., 97) it became necessary to again construe the same formula—"due process of law," as embodied in the fourteenth amendment—Mr. Justice Miller, speaking for the court, said: "The prohibition against depriving the citizen or subject of his life, liberty, or property without due process of law is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it was not new in the Constitution of the United States when it became a part of the fourteenth amendment, in the year 1866. The equivalent of the phrase 'due process of law,' according to Lord Coke, is found in the words 'law of the land,' in the Great Charter, in connection with the writ of *habeas corpus*, the trial by jury, and other guarantees of the rights of the subject against the oppression of the Crown." In *Smith v. Alabama* (124 U. S., 465) it was held that "the interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history," a statement affirmed by the adoption in *United States v. Wong Kim, Ark* (169 U. S., 649).

V. IMMEMORIAL FORMULAS TRANSLANTED FROM THE ENGLISH CONSTITUTION, UNCHANGEABLE BY SUBSEQUENT CONGRESSIONAL LEGISLATION.

The foregoing authorities put the fact beyond all question that the immemorial formulas or "terms of art" transferred from the English constitution to our own were adopted, not as isolated or abstract phrases, but as epitomes or digests of the great principles which they embodied. That is to say, the term "levying war" carried with it the identical meaning given it as a part of the statute of Edward III; the term "due process of law," the identical meaning given to it as a part of Magna Charta; the term "high crimes and misdemeanors," the identical meaning given it as a part of the law of the High Court of Parliament. Or, in other words, when such formulas were embedded in the Constitution of 1787, their historical meaning and construction went along with them as completely as if such meaning and construction had been written out at length upon the face of the instrument itself. If that be true, the conclusion is self-evident that no subsequent Congressional legislation can change in any way, by addition or subtraction, the definitions embodied in such formulas at the time of their adoption. If the contrary were true, Congress could any day give to the term "levying war" or "due process of law" a definition, conveying ideas of which the fathers never dreamed. Or if the term "high crimes and misdemeanors" could be subjected to a new Congressional definition, acts which were such in 1787 could be relieved of all criminality, and new acts not then criminal could be added to the list of impeachable offenses. So obvious is the fact that Congress can not legislate at all on the subject that Mr. Lawrence, whose brief has been heretofore quoted, frankly admitted, while striving to give to the powers of Congress the widest possible construction, that "Congress can not define or limit by law that which the Constitution defines in

two cases by enumeration, and in others by classification, and of which the Senate is sole judge."

The last phrase is specially suggestive of the fact that if Congress could, by subsequent legislation, "define or limit by law that which the Constitution defines," the Senate sitting as a court of impeachment could be entirely deprived by such legislation of the power to determine what were impeachable high crimes and misdemeanors as defined by the fathers in 1787. In other words, if Congress can add to or subtract from the constitutional definition in any particular, it can destroy it altogether. In the great case of *Marbury v. Madison* (1 Cranch., 137), the first in which an act of Congress was ever declared unconstitutional, the question of questions was this: Does the fact that the Constitution itself has defined the original jurisdiction of the Supreme Court prohibit Congress from enlarging such original jurisdiction by subsequent legislation? The solemn answer was that the attempt of Congress to do so was void. Why? Because the dividing line between the original and appellate jurisdiction, having been drawn by the Constitution itself, it is immovable by legislation. In the words of the great Chief Justice: "If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution is form without substance." Thus it follows that any act of Congress which attempts to change the constitutional definition of impeachable high crimes and misdemeanors, by adding to the list some offense unknown to the parliamentary law of England as it existed in 1787, is simply void and of no effect.

VI. IMPEACHMENTS IN ENGLAND: FIRST EPOCH.

The only pertinent definitions of the term "high crimes and misdemeanors," as contained in Article II, section 4, of the Federal Constitution, must be drawn (1) from the law of Parliament as it existed in 1787; (2) from the contemporaneous expositions of that law embodied in the constitutions of the several States. In order to present anything like an adequate statement of the English law of impeachment as it existed at the time in question, some account must be given of the process of growth through which it had passed prior to that time. The history of that growth is divided into two epochs, easily distinguishable from each other. The first begins with the proceedings against the Lords Latimer and Neville, which took place in the Good Parliament in the fiftieth of Edward III (1376). These proceedings are regarded by the constitutional historians as the earliest instances of a trial by lords upon a definite accusation made by the Commons. (Hallam, M. A., Vol. III, p. 56; Stubbs, Const. Hist., Vol. II, p. 431.) Not until early in the reign of Edward III was Parliament definitely and finally divided into two houses that deliberated apart; not until near the close of that reign did the Commons, as the grand jury of the whole realm, attempt to present persons accused of grave offenses against the State to the Lords for trial. At the outset, the new method of accusation was rivaled by what were known as "appeals," which have been thus defined: "It was the regular course for private persons, even persons who were not members of Parliament, to bring accusations of a criminal nature in Parliament, upon which proceedings were had." (Stephen, Hist. of the Criminal Law of England, Vol. I, 151.)

The results of the private warfare thus instituted were so inconvenient that "appeals" were finally abolished by the statute of 1 Hen. 4, c. 14. Thus left without a rival, proceedings by impeachment were occasionally employed during the reigns of Richard II, Henry IV, Henry V, and Henry VI. In the reign last named Lord Stanley was impeached in 1459 for not sending his troops to the battle of Bloreheath. That trial terminates the first epoch in the history of the law of impeachment in England. It was not again employed during the period that divides 1459 from 1621, an interval of one hundred and sixty-two years. The primary cause for the suspension is to be found in the fact that during that interval it was that the decline in the prestige and influence of Parliament was such that the directing power in the state passed to the King in council, the judicial aspect of which was known as "the star chamber." There it was that the great state trials took place during the reign of Edward IV and during the following reigns of the princes of the house of Tudor. Such impeachment trials as did take place during the first or formative epoch are not as distinctly defined as those that occurred during the later period, and have now only an antiquarian interest.

VII. IMPEACHMENTS IN ENGLAND: SECOND EPOCH.

With the revival of the powers of Parliament in the reign of James I, impeachment was resumed as a weapon of consti-

tutional warfare. From that time its modern history, with which this discussion is concerned, really begins. The first impeachment case to occur during the second epoch was that of Sir Giles Mompesson in 1621, the last that of Lord Melville in 1805. Including the first and last the total is fifty-four, catalogued by an eminent authority as follows:

- 1621. Sir Giles Mompesson. Proceedings against him for monopoly and abuse of patents. A private person. No definite articles presented in modern form.
- 1621. Lord Bacon. Lord Chancellor. *A judicial impeachment for bribery.*
- 1621. Sir F. Mitchell. Case identical with that of Sir Giles Mompesson. A private person.
- 1621. Sir H. Yelverton. Attorney-General, charged with improper conduct in his office, respecting persons concerned in monopolies and abuses of patents.
- 1625. The Earl of Middlesex. Lord treasurer, charged with high crimes and misdemeanors, including bribery and corruption.
- 1626. The Earl of Bristol. Charged with high treason.
- 1626. The Duke of Buckingham. Charged with high crimes and misdemeanors.
- 1640. The Earl of Strafford. Charged with high treason.
- 1640. The Lord Keeper Finch. Charged with high treason.
- 1640. Sir R. Berkley and other judges. *A judicial impeachment.* Charged with high treason and other great misdemeanors on account of judicial acts and opinions.
- 1641. Sir G. Ratcliffe. Charged with being concerned in the treasons of the Earl of Strafford.
- 1642. Archbishop Laud. Charged with high treason.
- 1642. Dr. John Cosin. Impeached "for introducing Popish ceremonies."
- 1642. Bishop Wren. Impeached "for favoring Popish ceremonies in the church."
- 1642. Daniel O'Neill. Charged with participation in two army plots.
- 1642. Sir E. Herbert. Attorney-general, impeached for high crimes and misdemeanors, in advising and delivering the articles against the Five Members.
- 1642. Sir E. Dering. Impeached for high crimes and misdemeanors in contriving and presenting the Kentish petition.
- 1642. Mr. Strode. Impeached for high treason. One of the Five Members.
- 1642. Mr. Spencer. (Not reported in State Trials.)
- 1642. Nine lords. (Not reported in State Trials.)
- 1642. Sir R. Gurney. Lord mayor of London, impeached for high crimes and misdemeanors.
- 1642. Mr. Hastings. Impeached for high treason in raising forces against the Parliament.
- 1642. Marquis of Hertford. (Not reported in State Trials.)
- 1642. Lord Strange. Impeached for high treason in raising forces against the Parliament.
- 1642. Mr. Wilde. (Not reported in State Trials.)
- 1642. Mr. Broccas. (Not reported in State Trials.)
- 1661. Mr. Drake. Impeached for publishing a seditious pamphlet.
- 1666. Lord Mordaunt. Impeached for high crimes and misdemeanors.
- 1667. Lord Clarendon. Impeached for high treason and other high crimes and misdemeanors.
- 1668. Sir W. Penn. Impeached for high crimes and misdemeanors.
- 1678. Lord Stafford and four other Roman Catholic Lords. Impeached for participation in what is generally called the "Popish plot."
- 1678. Lord Danby. Impeached for high treason and other high crimes and misdemeanors.
- 1680. Edward Seymour. Impeached for misconduct in the office of treasurer of the navy.
- 1680. Sir W. Scroggs. Chief justice of the King's Bench. *A judicial impeachment.* Charged with high treason and other great crimes and misdemeanors.
- 1680. Earl of Tyrone. (Not reported in State Trials.)
- 1681. Fitz-Harris. Impeached of high treason in being concerned in the "Popish plot."
- 1689. Sir A. Blair and others. Impeached of high treason, with others, for dispersing a treasonable and seditious paper.
- 1689. Lord Salisbury. Impeached of high treason for departing from his allegiance and being reconciled with the Church of Rome.
- 1689. Earl of Peterborough. Charged with the same offense.
- 1695. Duke of Leeds. Impeached of high crimes and misdemeanors. Second impeachment of him.
- 1698. John Goudet and others. (Not reported in State Trials.)

1701. Lord Portland. Whig peer impeached by Tory House of Commons for promoting Spanish partition treaties in 1700.

1701. Lord Somers. Same charge.

1701. Lord Halifax. Same charge.

1709. Dr. Sacheverell. Rector of St. Savior's, Southwark. Impeached for preaching two sermons inculcating unlimited passive obedience.

1715. Lord Oxford, Tory minister. Impeached by Whig House of Commons for share in negotiating the peace of Utrecht in 1713.

1715. Lord Bolingbroke. Same charge.

1715. Duke of Ormond. Same charge.

1715. Earl of Strafford. Impeached for misconduct as British plenipotentiary at Utrecht.

1715. Lord Derwentwater. Impeached, with several others, for high treason.

1724. Lord Macclesfield, Lord Chancellor. *A judicial impeachment for bribery.*

1746. Lord Lovat. Impeached of high treason for being concerned in the rebellion of 1745.

1787. Warren Hastings. Impeached on charges of misgovernment in India.

1805. Lord Melville. Impeached for malversation in office respecting the appropriation of public money to his own use. See Sir J. F. Stephen, *Hist. of the Crim. Law of Eng.*, vol. 1, p. 159, and *State Trials*, as to each case reported therein.

VIII. IMPEACHMENTS OF ENGLISH JUDGES.

An examination of the foregoing list reveals the fact that many of the impeachments in question were directed against private individuals, it having always been the law of England that all subjects, as well out of office as in office, might be thus accused and tried. A good illustration may be found in the notable case of Doctor Sacheverell, rector of St. Savior's, Southwark, who was impeached by the Commons and convicted by the Lords for having preached two sermons inculcating the doctrine of unlimited passive obedience. (*State Trials*, XV, p. 1.) As that branch of the law of impeachment, which authorized the accusation of private individuals out of office, was never reproduced in this country, cases of that class may be dismissed from consideration. By far the greater number of the remaining cases are what are known as "political impeachments," whereby one party in the State would attempt to crush its adversaries in office by impeaching them for high treason, which generally involved commitment to the Tower.

As illustrations, reference may be made to the case of Portland, Halifax, and Somers, three Whig peers impeached of high treason by a Tory House of Commons for their share in promoting the Spanish partition treaties in 1700; and to that of Oxford, Bolingbroke, and Ormond, Tory ministers impeached by the triumphant Whigs in the Commons for their share in negotiating the peace of Utrecht in 1713. (*State Trials*, Vol. XIV, p. 233. *Parl. Hist.*, Vol. VII, p. 105.) A well-known English writer has described the latter as "the last instance of purely political impeachment" (*Taswell-Langmead, English Const. Hist.*, p. 549, note.) Cases of that class shed but a dim light upon the definition of the term "high crimes and misdemeanors" as applied to those offenses for which English judges have been punished for misbehavior in office. No clear or authoritative definitions of the term in question can be found, as applied to that subject, outside of what are known as judicial impeachments as contradistinguished from political. As the purely judicial impeachment cases which have occurred in England are very few in number, their results may be stated within narrow limits.

The earliest of the accusations which have been made against English judges have been for the crime of bribery, the crime for which Lord Bacon was impeached by the Commons in 1621. The charges against Bacon particularly set forth instances of judicial corruption by the acceptance of bribes, and in his "confession and submission" he said: "I do plainly and ingeniously confess that I am guilty of corruption, and do renounce all defense." (*State Trials*, Vol. II, 1106.) Such cases, though rare, had occurred before Bacon's time. In the words of Sir J. F. Stephen, Coke "gives two instances in which judges were punished for taking bribes, namely, Sir William Thorpe, in 1351, who took sums amounting in all to 90 pounds for not awarding an exigent against five persons at Lincoln assizes, and certain commissioners (probably special commissioners) of oyer and terminer, who were fined one thousand marks each for taking a bribe of four pounds. I have elsewhere referred to the impeachment of the Chancellor Michael de la Pole, by Cavendish, the fishmonger, for taking a bribe of forty pounds, three yards of

scarlet cloth, and a quantity of fish, in the time of Richard II. * * *

Lord Macclesfield was also impeached and removed from his office for bribery in 1725." (Hist. of the Crim. Law of Eng., Vol. III, pp. 251-52, citing as to the case of Lord Macclesfield Sixteen State Trials, p. 767.) That case was the last judicial impeachment in England. It is not therefore strange that bribery, as a distinct and substance offense, should have been named, *side by side with treason*, as an impeachable crime, in the Constitution of the United States. After the bribery cases of Lord Chancellor Bacon and Lord Chancellor Macclesfield have been subtracted from the foregoing list, but two judicial impeachments remain in the entire history of the English people. Only in those two cases have the Commons impeached and the Lords tried English judges upon charges of judicial misconduct other than bribery.

IX. IMPEACHMENT OF SIR ROBERT BERKLEY AND OTHER JUDGES.

In 1635 Charles I. announced his intention to extend the exaction of ship money to the inland counties. When the writs of that year were resisted the judges gave answers in favor of the prerogative. When in 1636 another set of ship writs were issued Hampden made a test case by refusing to pay the assessment on his lands at Great Missenden, and the issue thus raised was argued in November and December, 1637, before a full bench. The contention made in favor of the Crown was sustained by seven of the judges; Finch, chief justice of the common pleas; Bramston, chief justice of the king's bench; Berkley, one of the justices of that court; Crawley, one of the judges of the common pleas; Davenport, lord chief baron of the exchequer; Weston and Trevor, barons of that court. When the day of reckoning came Finch fled to Holland, and the remaining six were impeached by the Commons for their judgments rendered in favor of the royal contention, the charges being delivered to the Lords July 6, 1641. As Berkley's opinion in favor of the legality of ship money was the most emphatic, he was made the special object of attack in articles which charged him not only with the ship-money opinion, but with other acts of judicial misconduct on the bench. The nature of the accusations against him can be best explained by extracts from the articles themselves, which open with the general statement "that the said Sir Robert Berkley, then being one of the justices of the said court of king's bench, hath traitorously and wickedly endeavored to subvert the fundamental laws and established government of the realm of England, and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared, by traitorous and wicked words, opinions, judgments, practices, and actions appearing in the several articles ensuing."

The following are a fair sample of the special charges: "4. That he, the said Robert Berkley, then being one of the justices of the King's Bench, and having taken an oath for the due administration of justice, according to the laws and statutes of the realm, to His Majesty's liege people, on or about the last of December subscribed an opinion, *in hæc verba*: 'I am of opinion, that where the benefit doth more particularly redound to the good of the ports,' etc. * * * 6. That he, the said Sir Robert Berkley, then being one of the justices of the Court of King's Bench, and duly sworn as aforesaid, did on ——— deliver his opinion in the exchequer chamber against John Hampden, esq., in the case of ship money. * * * 7. That he, the said Sir Robert Berkley, then being one of the justices of the Court of King's Bench, and one of the justices of the assize for the county of York, did, at the assizes held at York in Lent, 1636, deliver his charge to the grand jury, 'that it was a lawful and inseparable flower of the Crown for the King to command, not only the maritime counties, but also those that were inland, to find ships for the defense of the kingdom.' * * * 8. The said Sir R. Berkley then being one of the justices of the Court of King's Bench, in Trinity term last, then sitting on the bench in said court, upon debate of the said case between the said Chambers and Sir E. Bromfield, said openly in the court, 'that there was a rule of law, and a rule of government;' and that 'many things which might not be done by the rule of law might be done by the rule of government;' and would not suffer the point of legality of ship money to be argued by Chambers' counsel. * * * 9. The said Sir R. Berkley, then and there sitting on the bench, did revile and threaten the grand jury returned to serve at the said session, for presenting the removal of the communion table in All Saints Church in Hertford aforesaid. * * * 11. He, the said Sir R. Berkley, being one of the justices of the said Court of King's Bench, and sitting in said court, deferred to grant a prohibition to the said Court-Christian in said cause, although the counsel did move in the said court many several times, and several times, for a prohibition." (State Trials, vol. 3, pp. 1283-1291.) The impeachment against Berkley ended in his paying a fine of £10,000.

X. IMPEACHMENT OF SIR WILLIAM SCROGGS, CHIEF JUSTICE OF THE KING'S BENCH.

In the reign of Charles II, Sir William Scroggs, chief justice of the King's Bench, was impeached of high crimes and misdemeanors, the nature of which may be best explained by the following extracts from the articles themselves. The general accusation is "that the said William Scroggs, then being chief justice of the Court of King's Bench, hath traitorously and wickedly endeavored to subvert the fundamental laws, and the established religion and government of this Kingdom of England; and, instead thereof, to introduce popery and arbitrary and tyrannical government against law; which he has declared by divers traitorous and wicked words, opinions, judgments, practices, and actions." Chief among the special charges are the following: "II. That he, the said Sir William Scroggs, in Trinity term last, being then chief justice of the said court, and having taken an oath duly to administer justice according to the laws and statutes of this realm, in pursuance of his said traitorous purposes, did, together with the rest of the justices of the said court, several days before the end of said term, in an arbitrary manner, discharge the grand jury which then served for the hundred of Oswaldston, in the county of Middlesex, before they had made their presentments, etc. * * * III. That, whereas one Henry Carr had, for some time before, published every week a certain book, entitled 'The Weekly Pacquet of Advice from Rome, or The History of Popery,' wherein the superstitions and cheats of the Church of Rome were from time to time exposed, he, the said Sir William Scroggs, then chief justice of the Court of King's Bench, together with the other judges of the said court, before any legal conviction of the said Carr of any crime, did in the said Trinity term, in a most illegal and arbitrary manner, make and cause to be entered a certain rule of that court against the printing of said book, *in hæc verba*. * * * IV. That the said Sir William Scroggs, since he was made chief justice of the King's Bench, hath, together with the other judges of the said court, most notoriously departed from all rules of justice and equality in the imposition of fines upon persons convicted of misdemeanors in said court." The result was that the chief justice was removed from office and given a pension for life. (State Trials, Vol. VIII, pp. 195, 216.)

XI. PROCEEDING AGAINST LORD CHIEF JUSTICE KEELING.

Intervening between the case of Berkley and other judges (1640) and that of Sir William Scroggs (1680) are proceedings by the Commons against Lord Chief Justice Keeling, which occurred in 1667, notable for the reason that they clearly illustrate what kind of judicial acts were considered as impeachable high crimes and misdemeanors at that time. "A copy of Judge Keeling's case, taken out of the Parliament Journal, December 11, 1667: 'The House resumed the hearing of the rest of the report touching the matter of restraint upon juries; and that upon the examination of divers witnesses, in several causes of restraints put upon juries, by the Lord Chief Justice Keeling; whereupon the committee made their resolutions, which are as follows: 1. That the proceedings of the Lord Chief Justice, in the cases now reported, are innovations in the trial of men for their lives and liberties; and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government. 2. That in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and condemned Magna Charta, the great preserver of our lives, freedom, and property. 3. That he be brought to trial, in order to condign punishment, in such manner as the House shall judge most fit and requisite.'" (State Trials, vol. 6, p. 991, seq.)

"On the 16th of October, 1667, the House being informed 'that there have been some innovations of late in trials of men for their lives and deaths, and in some particular cases restraints have been put upon juries in the inquiries,' this matter is referred to a committee. On the 18th of November this committee are empowered to receive information against the Lord Chief Justice Keeling for any other misdemeanors besides those concerning juries. And on the 11th of December, 1667, the committee report several resolutions against the Lord Chief Justice Keeling of *illegal and arbitrary proceedings in his office*. The chief justice desiring to be heard, he is admitted on the 13th of December and heard in his defense to the matters charged against him, and being withdrawn, the House resolve 'that they will proceed no farther in the matter against him.'" (4 Hatsel Prec., pp. 123-4, cited in Chase's Trial, Vol. II, p. 461.)

XII. REMOVAL BY ADDRESS PROVIDED BY THE ACT OF SETTLEMENT.

By the foregoing analysis of the only English precedents to which we can look for expositions of the meaning of the phrase "high crimes and misdemeanors," as applied to the conduct of

English judges, the fact is put beyond all question that the only judicial acts which the House of Commons ever regarded as falling within that category are such acts as a judge performs while sitting upon the bench, administering the laws of the realm, either between private persons or between the Crown and the subject. In the case of Mr. Justice Berkeley the gravamen of the charge was that he rendered a judgment in the matter of ship money in conflict with what his triers considered the law of the realm to be. In the case of Chief Justice Scroggs the gravamen of the charge was that he arbitrarily discharged grand juries; that in a libel case he rendered an illegal judgment, and that he imposed unjust fines upon those convicted of misdemeanors. In the proceedings against Chief Justice Keeling the gravamen of the charge was that he had put "restraint" upon juries by fining them for their verdicts. "Wagstaff and others of a jury were fined an hundred marks a piece by Lord Chief Justice Keeling." (4 Hatsell Prec., p. 124, note.) Excepting bribery there is no case in the parliamentary law of England which gives color to the idea that the personal misconduct of a judge, in matters outside of his administration of the law in a court of justice, was ever considered or charged to constitute a high crime and misdemeanor. When the question is asked by what means is the personal misconduct of an English judge, not amounting to a high crime and misdemeanor, punished, the answer is easy.

Prior to the passage in 1701 of the famous Act of Settlement (12 and 13 Will. III, C. 2) neither the tenure nor the compensation of English judges rested upon a firm or definite foundation. Hallam (Const. Hist., Vol. III, p. 194) tells us that "it had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretense, who showed any disposition to thwart government in political prosecutions." As the hasty and imperfect Bill of Rights had failed to provide a remedy for that condition of things, it became necessary for the authors of the Act of Settlement, "the complement of the Revolution itself and the Bill of Rights," to provide that English judges should hold office during good behavior (*quandiu se bene gesserint*), and that they should receive ascertained and established salaries. But, while the judges were being thus entrenched in their offices, the fact was not forgotten that the remedy by impeachment extended only to high crimes and misdemeanors which did not embrace personal misconduct. Therefore a method of removal was provided by address, which was intended to embrace all misconduct not included in the term "high crimes and misdemeanors."

In the light of that statement it will be easier to understand the full purport of that section of the Act of Settlement which provides "that after the said limitations shall take effect as aforesaid, judges' commissions be made *quandiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." Thus, for seventy-five years prior to the severance of the political tie which bound the English colonies in America to the parent State, the twofold method for the removal of English judges was clearly defined and perfectly understood on both sides of the Atlantic. That twofold method embraced (1) the removal by impeachment for all acts constituting "high crimes and misdemeanors," a term then clearly defined in English parliamentary law; (2) the removal by address for all lesser acts of personal misconduct not embraced within that term. That such was the general and accepted view on this side of the Atlantic in 1776 of the English parliamentary law on impeachment and address will be put beyond all question by the following references to the several State constitutions in which that law reappeared.

XIII. IMPEACHMENT AND ADDRESS AS DEFINED IN THE CONSTITUTIONS OF THE SEVERAL STATES.

On May 10, 1776, the Continental Congress recommended to the several conventions and assemblies of the colonies the establishment of independent governments "for the maintenance of internal peace and the defence of their lives, liberties, and properties." (Charters and Constitutions, vol. 1, p. 3.) Before the end of the year in which that recommendation was made the greater part of the colonies had adopted written constitutions, in which were restated, in a dogmatic form, all of the vital principles of the English constitutional system. Illustrations of the adoption of the England plan for the removal of judges by impeachment and address may be drawn from the following State constitutions: The constitution of Pennsylvania of 1776, Article V, section 2, provides that "the judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, which shall not be sufficient ground

for impeachment, the governor may remove any of them, on the address of two-thirds of each branch of the legislature."

The Constitution of Delaware of 1792, Article VI, section 2, provides that "the chancellor and the judges of the supreme court of common pleas shall hold their office during good behavior; but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the legislature." The constitution of South Carolina of 1808, Article VII, section 4, provides that "for any willful neglect of duty or other reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any executive or judicial officer on the address of two-thirds of each house of the general assembly." Here are explicit and dogmatic statements of the settled rule of English parliamentary law that judges may be removed by impeachment for grave offenses of judicial misconduct, and by address for lesser offenses of personal misconduct. As this distinction was so well known, many of the State constitutions simply presuppose it without stating it in express terms. The constitution of Massachusetts of 1780, Chapter III, article 1, after providing for removal by impeachment, declares that "all judicial officers duly appointed, commissioned, and sworn shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: Provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature."

The constitution of Georgia of 1798, Article III, section 1, provides that "the judges of the superior court shall be elected for the term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon." The constitution of New Hampshire of 1784, Article I, part 2, provides that "all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: Provided, nevertheless, the president, with the consent of council, may remove them upon the address of both houses of the legislature." The constitution of Connecticut of 1818, Article V, section 3, provides that "the judges of the supreme court and of the superior court shall hold their offices during good behavior; but may be removed by impeachment, and the governor shall also remove them on the address of two-thirds of the members of each house of the general assembly." It is said that the constitution of New York of 1777 was the model from which the impeachment clauses of the Constitution of the United States were copied. (6 Am. Law Reg., N. S., 277.)

The New York constitution of that date expressly limited impeachment to persons in office, and omitted removal by address. Such an omission was, however, exceptional. The rule was to introduce into the State constitutions both processes of removal by impeachment and address. And if it were not for fear of wearying the court by reiteration, the list of instances could be greatly lengthened in which both methods were introduced into later State constitutions not here mentioned, together with the recognized distinction between impeachable offenses and the lesser acts of misconduct justifying only removal by address, expressed in the words "not sufficient ground of impeachment." (See Appendix.)

XIV. ENGLISH PARLIAMENTARY LAW OF IMPEACHMENT AS EMBODIED IN THE CONSTITUTION OF THE UNITED STATES.

Before the Federal Convention of 1787 met, the original State constitutions had been in operation for at least ten years. As a general rule the framers looked to that source for light when the adoption of a principle of English constitutional law was concerned.

The questions that constantly arose were: In what form has such a principle reappeared in the several States? Is its operation an effect satisfactory therein? Such examples were sometimes taken, however, not as guides, but as warnings. It did not always follow that a principle adapted to the wants of a single State was to be ingrafted without modification upon the constitution of a Federal State. The debates touching the adoption of impeachment and address pointedly illustrate that fact, as the Convention resolved to adopt the one without the other. The record is specially clear and direct upon that point. In the Madison Papers, pp. 481-2, the following appears:

"Article 11 being taken up, Doctor Johnson suggested that the judicial power ought to extend to equity as well as law, and moved to insert the words 'both in law and equity' after the words 'United States,' in the first line of the first section."

Mr. Read objected to vesting these powers in the same court.

On the question, New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia, aye—6; Delaware, Maryland, no—2; Massachusetts, New Jersey, North Carolina, absent.

On the question to agree to article 11, section 1, as amended, the States were the same as on the preceding question.

Mr. Dickinson moved, as an amendment to article 11, section 2, after the words "good behavior," the words, "*Provided that they may be removed by the Executive on the application by the Senate and House of Representatives.*" (The words of the Act of Settlement are, "but upon the address of both houses of Parliament, it may be lawful to remove them.") Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. Sherman saw no contradiction or impropriety if this were made a part of the constitutional legislation of the judiciary establishment. He observed that a like provision was contained in the British statutes.

Mr. RUTLEDGE. If the Supreme Court is to judge between the United States and particular States, this alone is an insuperable objection to the motion.

Mr. Wilson considers such a provision in the British Government as less dangerous than here; the House of Lords and House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended, by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted. The judges would be in a bad situation, if made to depend on any gust of faction which might prevail in the two branches of our Government. Mr. Randolph opposed the motion, as *weakening too much the independence of the judges.*

Mr. Dickinson was not apprehensive that the legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a judge.

On the question for agreeing to Mr. Dickinson's motion, it was negatived.

Connecticut, aye; all the other States present, no.

Thus the proposition to engraft upon our Federal Constitution that provision of the Act of Settlement, specially referred to in the debate by Mr. Sherman, was rejected with only one dissenting voice. When, at another time, Mr. Dickinson attempted to provide that the President should be removed by address, his proposal was rejected by the same majority. As Mr. William Lawrence (Impeachment of Andrew Johnson, Vol. I, p. 135) has stated it: "Removal on the address of both houses of Parliament is provided for in the Act of Settlement, 3 Hallam, 262. In the convention which framed our Constitution, June 2, 1787, Mr. John Dickinson, of Delaware, moved 'that the Executive be made removable by the National Legislature on the request of a majority of the legislatures of individual States.' Delaware alone voted for this, and it was rejected. *Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.*" The last sentence states the essence of the whole matter. The convention resolved that neither the executive nor judicial officers of the United States should be removed from office except "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

As a well-known authority has expressed it: "The first proposition was to use the words, 'to be removable on impeachment and conviction for malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out. It was voted that the clause should be simply 'removable on impeachment.' The debate shows that the members did not wish the Senate to be able to remove a civil officer whenever he acted in a way detrimental to the public service, for such a power was expressly refused. (Citing Madison Papers, p. 481, heretofore quoted.) A general debate took place on a clause in one draft which made the President triable only for treason and bribery. It was urged that the jurisdiction was too limited. The following are extracts from the debate which ensued: Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words 'or maladministration.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew 'maladministration,' and substituted 'other high crimes and misdemeanors against the State.' In the final draft the words 'against the State' were omitted, doubtless as surplusage, and the expressions finally adopted, 'crimes' and 'misdemeanors,' were words which had a well-defined signification in

the courts of England and in her colonies as meaning criminal offenses at common (parliamentary) law." American Law Review, vol. 16, p. 804. Article on "Impeachable offenses under the Constitution of the United States." The term "common" instead of "parliamentary" law is carelessly used in that excellent statement, as it often is elsewhere. After quoting Rawle on Const., 200, Lawrence (Johnson's Imp., Vol. I, p. 125) remarks: "This author says in reference to impeachments, 'we must have recourse to the common law of England for the definition of them;' that is, to the common parliamentary law. 3 Wheaton, 610; 1 Wood, and Minot, 448."

XV. IMPEACHMENT TRIALS UNDER THE CONSTITUTION OF THE UNITED STATES.

Seven impeachment trials have taken place under the machinery provided for that purpose by the Constitution of the United States: That of William Blount (1798), that of John Pickering (1803), that of Samuel Chase (1804), that of James H. Peck (1830), that of West H. Humphreys (1862), that of Andrew Johnson (1868), and that of William W. Belknap (1876). Three of the foregoing were political impeachments and four judicial, as those terms are understood in English parliamentary law. The articles presented by the House of Representatives against the four judges—Pickering, Chase, Peck, and Humphreys—illustrate in the most emphatic manner possible that the popular branch of Congress has heretofore always perfectly understood the meaning of the term "high crimes and misdemeanors," as applied to the misconduct for which a judge may be impeached. When placed side by side with the English precedents on that subject heretofore examined they agree in every particular. The House of Representatives, in the only four cases of the kind ever tried, limited its accusations, with the greatest strictness, to the acts of judgment performed by the judge on the bench, as contradistinguished from personal acts performed by the judge while in office, which might have been the ground of removal by address.

Turning first to the case against John Pickering, judge of the district court of New Hampshire, for practical illustrations, we find that judge charged with misconduct while adjudicating a certain admiralty case pending in said district court: "Yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of said cause did order and decree the ship *Eliza*, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States and to the manifest injury of their revenue." (Art. II.) Again (Art. III), when an appeal was prayed in open court in behalf of the United States, the charge is that "the said John Pickering, judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal as prayed for."

And again (Art. IV), after the statement was made that said Pickering was "a man of loose morals and intemperate habits," he was thus accused: "On the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district court in and for the district of New Hampshire, did appear upon the bench of said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor and dignity of the United States." It should be specially noted here that no pretense was made that "loose morals and intemperate habits" or profanity constituted a high crime and misdemeanor. Upon the contrary, the accusation was strictly limited to acts done "upon the bench of the said court" while "administering justice in a state of total intoxication." There was no attempt in Pickering's case to claim that personal misconduct, which might have been the ground of removal by address, was an impeachable offense.

The articles of impeachment presented against Judge Samuel Chase contain equally pointed illustrations. In Article I he is charged with delivering an opinion in writing on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the said John Fries, the prisoner, before the counsel

had been heard in his defense; in Article II the charge is that "the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Bassett, one of the jury, who wished to be excused from serving on said trial;" in Article III the charge is that on the trial the judge refused to permit a witness to testify; in Article IV the charge is of various acts of judicial misconduct during a trial; and in the remaining articles the charges are of various acts of judicial misconduct on the bench in charging and refusing to discharge grand juries.

The accusation against Judge James H. Peck was contained in a single article, based upon the judicial conduct of the judge while sitting upon the bench in a case of contempt against Luke E. Lawless, who had published a newspaper article criticising a judgment rendered by Judge Peck in a case in which Lawless was plaintiff's counsel. The gravamen of the charge was this: "The said James H. Peck, judge as aforesaid, did afterwards, on the same day, under the color and pretenses aforesaid, and with intent aforesaid, in the said court, then and there unjustly, oppressively, and arbitrarily order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day; and did then and there further cause the said unjust and oppressive sentence to be carried into execution."

The impeachment of Judge West H. Humphreys was begun and concluded during the civil war. He was tried and condemned in his absence and without a hearing. While such an anomalous proceeding can have but little weight as a precedent, what it does contain of matter relevant to a judicial impeachment supports the contention made herein. The first charge contained in the articles presented against Judge Humphreys was that he was guilty of treason, in that he "then being district judge of the United States, as aforesaid, did then and there, to wit, within said State, unlawfully and in conjunction with other persons, organize armed rebellion against the United States and levy war against them." When the allegations incident to the accusation of treason are subtracted from the articles, all that remains is a charge of judicial misconduct upon the part of Judge Humphreys while sitting in a court of the Confederate States.

The words of the accusation are that the said Humphreys "did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named, said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit, in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; * * *. In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America, of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron." Thus in this anomalous proceeding, carried on amid the passions of a great civil war, the idea was not for one moment lost sight of that the misconduct upon the part of a judge, which constitutes an impeachable high crime and misdemeanor, must occur while he is actually presiding in a judicial tribunal and abusing its powers.

XVI. WHY THE PLEAS INTERPOSED TO THE FIRST SEVEN ARTICLES OF IMPEACHMENT AGAINST JUDGE SWAYNE SHOULD BE SUSTAINED.

If the foregoing argument is a sound one, the following conclusions have been fixed upon a firm foundation:

First. That the definition of the term "high crimes and misdemeanors," as employed in Article II, section 4, of the Constitution, must be drawn from the parliamentary law of England as it existed in 1787, construed in the light of the contemporaneous expositions of that law embodied in the provisions of the constitutions of the several States as to impeachment and address.

Second. That the definition of that term, as thus fixed at the time of the adoption of the Federal Constitution, is organic and unchangeable by subsequent Congressional legislation; that no act, not an impeachable offense when the Constitution was adopted, can be made so by a subsequent act of Congress.

Third. That the "high crimes and misdemeanors" for which English judges were impeachable in 1787 can only be clearly ascertained from an examination of what are known as the

English judicial impeachment cases, as contradistinguished from the political.

Fourth. That English judges have never been impeached except for bribery, or for judicial misconduct occurring in the actual administration of justice in court, either between private individuals or between the Crown and the subject.

Fifth. That since the act of settlement (1701), when the tenure and compensation of English judges was first fixed on a definite basis, such judges have been removable for judicial misconduct, *not amounting to an impeachable high crime and misdemeanor*, by address.

Sixth. That the plain distinction between the acts for which a judge may be impeached and the acts for which he may be removed by address was clearly recognized and defined in the constitutions of many of the States.

Seventh. That after careful consideration and debate the Federal Convention of 1787, with only one dissenting vote, rejected the proposition to embody the removal of Federal judges by address in the Constitution of the United States "as weakening too much the independence of the judges." After rejecting the more ample provisions upon the subject of impeachment embodied in some of the State constitutions, it was resolved that Federal judges should only be removed by impeachment for and conviction of "high crimes and misdemeanors" in the limited sense in which that phrase was defined in the parliamentary law of England as it existed in 1787.

Eighth. That in no one of the four judicial impeachments which have taken place since the adoption of our Federal Constitution has the House of Representatives ever attempted to impeach a Federal judge for "high crimes and misdemeanors," except in those cases in which he would have been impeachable under the English parliamentary precedents. That is to say, the proceedings against Justice Berkley and other judges (1640), the proceedings against Chief Justice Keeling (1667), the proceedings against Chief Justice Scroggs (1680), the proceedings against Judge Pickering (1803), the proceedings against Judge Chase (1804), the proceedings against Judge Peck (1830), the proceedings against Judge Humphreys (1862), so far as they relate to judicial misconduct, rest upon a single proposition, which is this: In English and American parliamentary and constitutional law the judicial misconduct which rises to the dignity of a high crime and misdemeanor must consist of judicial acts, *performed with an evil or wicked intent*, by a judge while administering justice in a court, either between private persons or between a private person and the government of the State. All personal misconduct of a judge, occurring during his tenure of office and not coming within that category, must be classed among the offenses for which a judge may be removed by address, A METHOD OF REMOVAL WHICH THE FRAMERS OF OUR FEDERAL CONSTITUTION REFUSED TO EMBODY THEREIN.

When the allegations contained in articles 1, 2, and 3, presented against this respondent, are examined, it appears that they set forth in three forms an identical charge, which is in substance that the respondent, in settling his accounts with certain United States marshals under a certain act of Congress providing for the reasonable expenses for travel and attendance of a district judge, when lawfully directed to hold court outside of his district, exacted and received in payment for such expenses from the said marshals sums in excess of the amounts contemplated in said act. It is charged that such acts constitute "a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office." The short answer to such a charge is that no such offence was ever thought of or defined in the parliamentary law of England as a high crime and misdemeanor in 1787, or at any other time; that it bears no relation whatever to the acts known in English parliamentary law as an impeachable offence. If it be true, as alleged, that the respondent was guilty in making such settlements of "obtaining money from the United States by a false pretense," then the remedy is by indictment by a grand jury and a trial by a petit jury, as in the case of any other citizen of the country. The Constitution expressly provides, Article I, section 3, that persons subject to impeachment "shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." While it is quite possible to understand how such personal misconduct upon the part of a judge, entirely disconnected with the conduct of judicial business on the bench, might subject him to removal by address in a State which had adopted that plan of removal for nonimpeachable offenses, it is hard to conceive how any effort of the imagination could reach the conclusion that such an act constitutes an impeachable high crime and misdemeanor as defined in English parliamentary law.

The same comments are applicable to the charges made in articles 4 and 5 as to the use by the respondent of a certain car

belonging to a certain railroad, "the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors." Even if it could be established that the circumstances attending such a transaction would warrant removal by address, no advance would be made toward the conclusion that such acts constitute an impeachable high crime and misdemeanor as defined in English parliamentary law, because the further allegation that "the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as part of the necessary expenses of operating said road" falls far short of the English and American rule as to the evil or wicked intent which must accompany a judgment or opinion delivered on the bench in order to render it impeachable. Nothing is better settled than the fact that a judge is not impeachable even for a judgment, order, or opinion rendered contrary to law unless it is alleged and proved that it was rendered with an evil, wicked, or malicious intent. Justice Berkley was impeached not simply because he decided in favor of ship money, but because he "traitorously and wickedly endeavored to subvert the fundamental laws" of the realm thereby. Chief Justice Scroggs was impeached not simply for imposing "fines upon persons convicted of misdemeanors in said court," but because he imposed them "for the further accomplishing of his said traitorous and wicked purposes."

Justice Chase was impeached because he "with intent to oppress and procure the conviction of the said Callender did overrule the objection of John Bassett, one of the jury;" "that, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Sampel Chase to be given in." Judge Peck was impeached not because he punished Lawless for contempt, but because he did so "with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless under color of law, * * * under the color and pretense aforesaid and with the intent aforesaid, in the said court then and there did unjustly, oppressively, and arbitrarily order and adjudge," etc. If further illustrations of the necessity for averments as to the wicked and malicious intent with which a judicial act must be performed need be given, they may be drawn from articles 8, 9, 10, 11, and 12, presented against this respondent, in which impeachable offenses are properly charged under the rule which the Constitution prescribes—that is to say, the rule of English parliamentary law. It is charged in one article that the said Charles Swayne "did maliciously and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney at law, for an alleged contempt of the circuit court of the United States;" and in another that he "did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States."

With the plain and settled rule thus recognized clearly in view, the draftsmen of articles 4 and 5 have not only failed to charge that the respondent "allowed the credit claimed by said receiver for and on account of the said expenditure," etc., "maliciously and unlawfully," but what is more to the point, they have failed to charge that he did so "knowingly." There is no reason to suppose, in the absence of such an allegation, that a judge, approving the mass of accounts presented to the court by a receiver of a railroad, would have personal knowledge of every trivial item which such accounts contain. The presumption is clearly to the contrary. In articles 4 and 5 there is no charge either that the respondent ever "knowingly" passed upon the items of expense in question or that he approved them "maliciously and unlawfully." In the absence of such allegations articles 4 and 5 fall to the ground.

The charge of nonresidence contained in article 6 presupposes the validity of section 551, Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor." If the foregoing argument proves anything, it is the fact that when the phrase "high crimes and misdemeanors" was embodied in the Federal Constitution in 1787 it drew along with it, as an integral part of it, the definitions which fixed its meaning in English parliamentary law at that time. The phrase, coupled with the definitions of it, thus became organic and unchangeable by subsequent Congressional legislation, just as the definition of the original and appellate jurisdiction of the Supreme Court became organic and unchangeable. The convention pointedly refused to make impeachable offenses an uncertain or changeable quantity. "The first propo-

sition was to use the words 'to be removable on impeachment and conviction for malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out. * * * Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words 'or maladministration.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew 'maladministration' and substituted 'other high crimes and misdemeanors against the State.'" (American Law Review, vol. 16, p. 804.)

The fathers knew exactly the limitations of the phrase adopted, and they repelled the idea that it was ever to be enlarged or diminished. If nonresidence of a judge in his district could be added by Congress to the list of impeachable offenses, that list could be thus indefinitely extended; or, by the same authority, every impeachable offense as understood in 1787 could be abolished. If it is admitted that Congress can change the organic definition, either by addition or subtraction, it follows as clearly as a mathematical demonstration that the scheme of impeachment provided in the Constitution can be entirely remodeled by legislation. The validity of the section in question, making nonresidence a high misdemeanor, can not be supported by serious argument. Even if it could be, the fact can not be lost sight of that its plain provision is that "every such judge shall reside in the district for which he is appointed." It will not be disputed that Judge Swayne was so residing in the district for which he was appointed at the time that subsequent legislation excluded the place of his residence from such district. Certainly nothing more can be put forward by those who assert the validity of section 551 than the contention that it was respondent's duty to remove, within a reasonable time, from the district for which he was appointed into the new one for which he was not appointed. It follows, therefore, that the accusation now made amounts to nothing more than the charge that respondent did not act with sufficient alacrity; that he did not remove his residence into the new district with sufficient promptness. How could such laches possibly constitute an impeachable high crime and misdemeanor?

XVII. TWO UNSOUND CONTENTIONS.

When sitting as a high court of impeachment the Senate is the sole and final judge of the meaning of the phrase "high crimes and misdemeanors." It has been well said that "'Treason, bribery, and other high crimes and misdemeanors' are of course impeachable. Treason and bribery are specifically named. But 'other high crimes and misdemeanors' are just as fully comprehended as though each was specified. The Senate is made the sole judge of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge." (Lawrence, Johnson's Imp., Vol. I, p. 136.) And yet the Senate sitting as a court of impeachment has in no one of the seven cases tried before it ever attempted to define the momentous phrase in question, and probably never will. When a new case arises nothing can be learned except what may be gleaned from the individual utterances of Senators, and from the arguments of counsel made in preceding cases, too often under the temptation to bend the precedents to the necessities of the particular occasion. One good result has, however, been the outcome of such discussions, and that is the elimination of two propositions which have perished through their own inherent weakness. On the one hand, a grotesque attempt has been made to narrow unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that the power of impeachment is limited to offences positively defined by the statutes of the United States as impeachable crimes and misdemeanors.

Apart from its other infirmities, this contention loses sight of the fact that Congress has no power whatever to define a high crime and misdemeanor. On the other hand, an equally untenable attempt has been made to widen unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that, under the general principles of right, it can declare that an impeachable high crime or misdemeanor is one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers for improper motives or for an improper purpose. This expansive and nebulous definition embodies an attempt to clothe the Senate sitting as a court with such a jurisdiction as

it would have possessed had the Federal Convention seen fit to extend impeachment "to malpractice and neglect of duty," or to "maladministration," a proposition rejected with a single dissent because, as Madison expressed it, "So vague a term will be equivalent to a tenure during the pleasure of the Senate."

Even that school which gives the widest possible interpretation to the Federal Constitution will hardly be willing to go so far, even under the general-welfare clause, as to write into the Constitution phrases and meanings which the framers expressly rejected, in order to accomplish what may be considered by some a convenient end. Certainly that school which still respects the canons of strict construction can not listen to such an argument. Between the two extremes, those who have made a careful study of the subject find no difficulty in reaching the obvious conclusion that the term "high crimes and misdemeanors" embraces simply those offenses impeachable under the parliamentary law of England in 1787, subject to such modifications as that law suffered in the process of reproduction. When the objection is made that the phrase thus construed covers too narrow an area, the answer is that it was the expressly declared purpose of the framers so to restrict it within narrow limits perfectly understood at the time. In the first place, the proposition to adopt removal by address was rejected with only one dissent; in the second, the proposal to adopt such a comprehensive term as "maladministration" was rejected and the limited phrase in question substituted. The declaration was clearly made at the time that there must be no undue weakening of the independence of the Federal judiciary. The necessity for such a precaution was soon justified by events.

A leading authority upon the subject tells us that upon the destruction of the Federalist party on the election of Jefferson "An assault upon the judiciary, State and Federal, was made all along the lines. In some States, as New Hampshire, old courts were abolished and new ones with similar jurisdiction created for the sole purpose of obtaining new judges. In Pennsylvania an obnoxious Federal judge was removed from the common pleas by impeachment; and an impeachment of all the Federal judges of the highest court was made, but failed through the uprising of the entire bar, irrespective of party lines, in defense of their official chiefs. A similar attack was made upon the Federal judiciary." (Foster on the Constitution, Vol. I, p. 531.) With the possibility of such an assault impending it is not strange that the makers of our Federal Constitution should have confined the power of removing judges by impeachment within the well-known limits which the English constitution had defined.

The pleas to the jurisdiction interposed in behalf of respondents to articles 1, 2, 3, 4, 5, 6, and 7 should be sustained, because the facts set forth in said articles, even if true, do not constitute "high crimes and misdemeanors," as defined in Article II, section 4, of the Constitution of the United States.

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Counsel for Respondent.

APPENDIX.

The Constitution of the United States and the State constitutions—Impeachment provisions.

UNITED STATES CONSTITUTION.

Article II, section 4:

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article I, section 3:

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold or enjoy any office of honor, trust, or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

THE THIRTEEN ORIGINAL STATES.

NEW HAMPSHIRE.

Constitution of 1784, article 1, part 2:

The senate shall be a court with full power and authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the State for misconduct or maladministration in their offices. But previous to the trial of any such impeachment the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence. Their judgment, however, shall not extend further than removal from office, disqualification to hold or enjoy any place of honor, trust, or profit under the State; but the party so convicted shall nevertheless be liable to indictment, trial, judgment, and punishment according to laws of the land. (Charters and Constitutions, Ben: Perley Poore, 1286.)

Judiciary power:

All judicial officers duly appointed, commissioned, and sworn shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: *Provided, nevertheless*, The president, with consent of counsel, may remove them upon the address of both houses of the legislature. (Charters and Constitutions, 1290.)

MASSACHUSETTS.

Constitution of 1780, Chapter I, section 2:

ART. VIII. The senate shall be a court with full authority to hear

and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct and maladministration in their offices; but, previous to the trial of every impeachment the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this Commonwealth; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment according to the laws of the land. (Charters and Constitutions, 963.)

Chapter III, "Judiciary power:"

ARTICLE I. * * * All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: *Provided, nevertheless*, The governor, with consent of the council, may remove them upon the address of both houses of the legislature. (Charters and Constitutions, 968.)

RHODE ISLAND.

Constitution of 1842, Article X:

SEC. 4. The judges of the supreme court shall be elected by the two houses in grand committee. Each judge shall hold his office until his place shall be declared vacant by a resolution of the general assembly to that effect; which resolution shall be voted for by a majority of all members elected to the house in which it may originate, and be concurred in by the same majority of the other house. Such resolution shall not be entertained at any other than the annual session for the election of public officers; and in default of the passage thereof at said session the judge shall hold his place as is herein provided. But a judge of any court shall be removed from office if, upon impeachment, he shall be found guilty of any official misdemeanor. (Charters and Constitutions, 1611, 1612.)

Constitution of 1842, Article XI:

SEC. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such cases shall not extend further than to removal from office. The person convicted shall, nevertheless, be liable to indictment, trial, and punishment according to law. (Page 1612.)

CONNECTICUT.

Constitution of 1818, Article V:

SEC. 3. * * * The judges of the supreme court and of the superior court shall hold their offices during good behavior, but may be removed by impeachment, and the governor shall also remove them on the address of two-thirds of the members of each house of the general assembly. (Page 263.)

Article IX:

SEC. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such cases shall not extend further than to removal from office and disqualifications to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law. (Page 265.)

NEW YORK.

Constitution of 1777, Paragraph XXXII:

And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations, which shall be established by the legislature. (Page 1337.)

Chapter XXXIII:

That the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices be vested in the representatives of the people in assembly; but that it shall always be necessary that two-thirds parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment the members of the said court shall, respectively, be sworn truly and impartially to try and determine the charge in question according to evidence and that no judgment of the said court shall be valid unless it be assented to by two-thirds parts of the members then present; nor shall it extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this State. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment according to the laws of the land. (Page 1337.)

Chapter XXXIV:

And it is further ordained, That in every trial on impeachment, or indictment for crimes, or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions. (Page 1337.)

Constitution of 1821, Article V:

SEC. 1. The court for the trial of impeachments, and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them. (Page 1346.)

SEC. 2. The assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment.

No person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in case of impeachment, shall not extend further than the removal from office and the disqualification to hold and enjoy any office of honor, trust, or profit under this State, but the party convicted shall be liable to indictment and punishment according to law.

Constitution of 1846, Article VI:

SEC. 1. The assembly shall have the power of impeachment by the vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. * * * No person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party impeached shall be liable to indictment and punishment according to law. (Page 1358.)

SEC. XI. Justices of the supreme court and judges of the court of appeals may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly and a majority of all the members elected to the senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and the judges and justices of inferior courts not

of record, may be removed by the senate on the recommendation of the governor, but no removals shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal. (Page 1359.)

Article VI:

Amendments to constitution of 1846. (Page 1368.)

Sec. 1. [Same as section 1 of constitution of 1846.] (Page 1358.)

NEW JERSEY.

Constitution of 1776, Paragraph XII:

Provided always, That the said officers, severally, shall be capable of being reappointed, at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehavior, by the council, on an impeachment of the assembly. (Page 1312.)

Constitution of 1844, Article VI, "Judiciary:"

Sec. 3. The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all impeachments shall be tried by the senate; the members when sitting for that purpose to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of all the members of the senate.

2. Any judicial officer impeached shall be suspended from exercising his office until his acquittal.

3. Judgment, in cases of impeachment, shall not extend further than to removal from office and to disqualification to hold and enjoy any office of honor, profit, or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial, and punishment according to law. (Pages 1320-1321.)

PENNSYLVANIA.

Constitution of 1776:

Sec. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commission judges.

Sec. 22. Every officer of State, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal for maladministration. All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

Sec. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of reappointment at the end of that term, but removable for misbehavior at any time by the general assembly; * * * (Page 1545.)

Constitution of 1790, Article IV:

Sec. 3. The governor, and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office. But judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this Commonwealth. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law. (Page 1552.)

Article V:

Sec. 2. The judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Constitution of 1838, Article IV:

Sec. 3. The governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the Commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 1561.)

Article V:

Sec. 2. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges, required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Amendments to Pennsylvania constitution of 1838, Article V:

Sec. 2. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well, * * * all of whom shall be commissioned by the governor, BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS OF IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of each branch of the legislature. (Page 1568.)

Article VI:

Sec. 3. The governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth; the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

Sec. 4. All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed officers, other than judges of the courts of record and the superintendent of public instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except governor, lieutenant-governor, members of the general assembly, and judges of the courts of record learned in the law, shall be removed by the governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the senate. (Page 1582.)

DELAWARE.

Constitution of 1776:

ART. 23. * * * And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the general assembly. (Page 277.)

Constitution of 1792, Article V:

Sec. 2. The governor, and all other civil officers under this State,

shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. (Page 283.)

Article VI:

Sec. 2. The chancellor and the judges of the supreme court of common pleas shall hold their offices during good behavior; but FOR ANY REASONABLE CAUSE WHICH SHALL NOT BE A SUFFICIENT GROUND FOR AN IMPEACHMENT the governor may, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the legislature.

Constitution of 1831, Article V:

Sec. 2. (Page 294.) [Same as section 2, Article V, of constitution of 1792, p. 293.]

Article VI:

Sec. 14. The governor may, for any reasonable cause, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the general assembly. In all cases where the legislature shall so address the governor the cause of removal shall be entered on the journals of each house. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied with the causes alleged for his removal, at least five days before the day on which either house of the general assembly shall act thereupon. (Page 297.)

MARYLAND.

Constitution of 1851, Article IV, "Judiciary department:"

Sec. 4. Subject to removal for incompetency, wilful neglect of duty, or misbehavior in office, on conviction in a court of law, or by the governor upon the address of the general assembly, two-thirds of the members of each house concurring in such address. (Pages 848-849.)

Constitution of 1864, Article IV, "Judiciary department," part 1:

Sec. 4. Any judge shall be removed from office by the governor on conviction, in a court of law, of incompetency, of wilful neglect of duty, of misbehavior in office, or any other crime; or on impeachment according to this constitution, or the laws of the State; or on the address of the general assembly, two-thirds of each house concurring in such address, and the accused having been notified of the charges against him and had opportunity of making his defense. (Page 873.)

Constitution of 1867, Article 14, "Judiciary department," part 1:

Sec. 4. (Page 902.) [Same as section 4 of constitution of 1864, set out above.]

VIRGINIA.

Constitution of 1776:

The governor, when he is out of office, and others offending against the State, either by maladministration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the house of delegates, such impeachment to be prosecuted by the attorney-general or such other person or persons as the house may appoint in the general court according to the laws of the land. If found guilty he or they shall be either forever disabled to hold any office under government or be removed from such office pro tempore, or subjected to such pains or penalties as the laws shall direct.

If all or any of the judges of the general court should on grounds (to be judged of by the house of delegates) be accused of any of the crimes or offenses above mentioned, such house of delegates may, in like manner, impeach the judge or judges so accused, to be prosecuted in the court of appeals, and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause. (Page 1912.)

Constitution of 1830, Article III:

Sec. 13. The governor, the judges of the court of appeals and superior court, and all others offending against the State, either by maladministration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the house of delegates, such impeachment to be prosecuted before the senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the Commonwealth; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law. (Page 1917.)

Article V:

Sec. 2. No law abolishing any court shall be construed to deprive a judge thereof of his office unless two-thirds of the members of each house present concur in the passing thereof; but the legislature may assign other judicial duties to the judges of courts abolished by any law enacted by less than two-thirds of the members of each house present. (Page 1918.)

Constitution of 1830, Article V:

Sec. 4. The judges of the supreme court of appeals and of the superior courts shall be elected by the joint vote of both houses of the general assembly. (Page 1919.)

Sec. 6. Judges may be removed from office by a concurrent vote of both houses of the general assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the journals of each. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

Constitution of 1850, Article IV:

Sec. 18. The governor, lieutenant-governor, judges, and all others offending against the State by maladministration, corruption, neglect of duty, or other high crime or misdemeanor, shall be impeachable by the house of delegates and be prosecuted before the senate, which shall have the sole power to try impeachments. When sitting for that purpose they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Commonwealth; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The senate may sit during the recess of the general assembly for the trial of impeachments. (Page 1928.)

Article VI:

Sec. 17. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against

whom the general assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon. (Page 1934.)

Constitution, 1864, Article IV:
Sec. 18. (Page 1943.) [Same as section 18, constitution of 1850, Article IV, page 1928.]

Article VI:
Sec. 16. (Page 1949.) [Same as section 17, constitution of 1850, Article VI, page 1934.]

Constitution of 1870, Article V:
Sec. 16. (Page 1962.) [Same as section 18, constitution of 1850, Article IV, page 1928.]

Constitution of 1870, Article VI:
Sec. 23. Judges shall be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon. (Page 1966.)

NORTH CAROLINA.

Constitution of 1776:

XIII. That the general assembly shall, by joint ballot of both houses, appoint judges of the supreme courts of law and equity, judges of admiralty, and attorney-general, who shall be commissioned by the governor, and their offices during good behavior.

XXIII. The governor and other officers offending against the State by violating any part of this constitution, maladministration, or corruption, may be prosecuted, on the impeachment of the general assembly or presentment of the grand jury of any court of supreme jurisdiction in this State. (Page 1412.)

Amendments to constitution of 1776, ratified in 1835, Article III:

Sec. 1. The governor, judges of the supreme court, and judges of the superior courts, and all other officers of this State (except justices of the peace and militia officers), may be impeached for wilfully violating any article of the constitution, maladministration, or corruption.

Judgment in cases of impeachment shall not extend further than to remove from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party convicted may nevertheless be liable to indictment, trial, judgment, and punishment according to law. (Page 1417.)

Sec. 3. Upon the conviction of any justice of the peace of any infamous crime, or of corruption and malpractice in office, the commission of such justice shall be thereby vacated, and he shall be forever disqualified from holding such appointment.

Constitution of 1868, Article IV:

Sec. 4. The judicial power of the State shall be vested in the court for the trial of impeachments, a supreme court, a superior court, courts of justices of the peace, and especial courts. (Page 1426.)

Sec. 5. The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 6. The house of representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the senators present. When the governor is impeached the chief justice shall preside.

Amended constitution of 1876, Article I:

Sec. 2. (Page 1442.) [Same as section 4, constitution of 1868, page 1426, except last line, which says "and such other courts inferior to the supreme court as may be established by law."]

Sections 3 and 4, same as sections 5 and 6 of constitution of 1868, page 1426.

Constitution of 1876, Article IV:

Sec. 31. Any judge of the supreme court, or of the superior courts, and the presiding officers of such courts inferior to the supreme court as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the general assembly. The judge or presiding officer against whom the general assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon. (Page 1444.)

SOUTH CAROLINA.

Constitution of 1776, Paragraph XX:

That all other judicial officers shall be chosen by ballot, jointly by the general assembly and legislative council, and, except the judges of the court of chancery, commissioned by the President and Commander in Chief during good behavior, but shall be removed on address of the general assembly and legislative council. (Page 1619.)

Constitution of 1778, Paragraph XXIII:

That the form of impeaching all officers of the State for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the house of representatives. But that it shall always be necessary that two-third parts of the members present do consent to and agree in such impeachment. That the senators, and such of the judges of this State as are not members of the house of representatives, be a court for the trial of impeachments under such regulations as the legislature shall establish, and that previous to the trial of every impeachment the members of the said court shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence, and no judgment of the said court, except judgment of acquittal, shall be valid unless it shall be assented to by two-third parts of the members then present, and on every trial, as well on impeachments as on others, the party accused shall be allowed counsel. (Page 1624.)

Paragraph VII:

That all other judicial officers shall be chosen by ballot, jointly by the senate and house of representatives, and, except the judges of the court of chancery, commissioned by the governor and commander in chief during good behavior, but shall be removed on address of the senate and house of representatives.

Constitution of 1790, Article III:

Sec. 1. The judicial power shall be vested in such superior and inferior courts of law and equity as the legislature shall from time to time direct and establish. The judges of each shall hold their commissions during good behavior. (Page 1631.)

Article V:

Sec. 1. The house of representatives shall have the sole power of

impeaching, but no impeachment shall be made unless with the concurrence of two-thirds of the house of representatives. (Page 1632.)

Sec. 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

Sec. 3. The governor, lieutenant-governor, and all the civil officers shall be liable to impeachment for any misbehavior in office; but judgment in such cases shall not extend further than to a removal from office and a disqualification to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

Article VI:

Sec. 1. The judges of the superior courts shall be elected by the joint ballot of both houses in the house of representatives.

Constitution of 1828; ratified, 1828.

That the third section of the fifth article of the constitution of this State shall be altered to read as follows, viz:

"Sec. 3. The governor, lieutenant-governor, and all civil officers shall be liable to impeachment for high crimes and misdemeanors, for any misbehavior in office, for corruption in procuring office, or for any act which shall degrade their official character. But judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law." (Page 1636.)

Sec. 4. All civil officers whose authority is limited to a single election district, a single judicial district, or part of either, shall be appointed, hold their office, be removed from office, and in addition to liability to impeachment may be punished for official misconduct in such manner as the legislature previous to their appointment may provide.

Sec. 5. If any civil officer shall become disabled from discharging the duties of his office by reason of any permanent bodily or mental infirmity, his office may be declared to be vacant by a joint resolution, agreed to by two-thirds of the whole representation in each branch of the legislature: *Provided*, That such resolution shall contain the grounds for the proposed removal, and before it shall pass either house a copy of it shall be served on the officer and a hearing be allowed him.

Constitution of 1865, Article III:

Sec. 1. The judicial power shall be vested in such superior and inferior courts of law and equity as the general assembly shall from time to time direct and establish. The judges of the superior courts shall be elected by the general assembly; shall hold their offices during good behavior. (Pages 1641-1642.)

Article VI:

Sec. 2. [Same as section 2 of constitution of 1790, p. 1632.]

Sec. 3. [Same as section 3, constitution of 1828, p. 1636.]

Sec. 4. [Same as section 4, constitution of 1828, p. 1636, except in two last lines, which read "as the general assembly previous to their appointment may provide."]

Sec. 5. [Page 1462.] [Same as section 5, constitution of 1828, p. 1636.]

Constitution of 1868, Article IV, "Judicial department":

Sec. 2. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum. They shall be elected by a joint vote of the general assembly for the term of six years. [Page 1654.]

Article VII, "Impeachments":

Sec. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such case shall not extend further than removal from office. The persons convicted shall, nevertheless, be liable to indictment, trial, and punishment according to law. (Pages 1657-1658.)

Sec. 4. For any wilful neglect of duty OR OTHER REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, THE GOVERNOR shall remove any executive or judicial officer on the address of two-thirds of each house of the general assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further*, That the officer intended to be removed shall be notified of such cause or causes and shall be admitted to a hearing in his own defense before any vote for such address, and in all cases the votes shall be taken by yeas and nays and be entered on the journals of each house, respectively.

GEORGIA.

Constitution of 1798, Article III:

SECTION 1. The judges of the superior court shall be elected for the term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. (Page 393.)

Sec. 4. Justices of the inferior courts shall be appointed by the general assembly and be commissioned by the governor, and shall hold their commissions during good behavior or as long as they respectively reside in the county for which they shall be appointed, unless removed by sentence on impeachment, or by the governor on the address of two-thirds of each branch of the general assembly.

Constitution of 1835, Article III:

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the legislature for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified, removable by the governor on the address of two-thirds of both branches of the general assembly for that purpose, or by impeachment and conviction thereon. * * * The judges of the superior court shall be elected for the term of four years, and shall continue in office until their successors shall be elected and qualified, removable by the governor on the address of two-thirds of both branches of the general assembly for that purpose, or by impeachment and conviction thereon. (Page 399.)

Constitution of 1865, Article IV:

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the general assembly for such term of years, not less than six, as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified; removable by the governor on the address of two-thirds of each branch of the general assembly or by impeachment and conviction thereon. (Pp. 408-409.)

Sec. 2. The judges of the superior courts removable by the governor on the address of two-thirds of each branch of the general assembly or by impeachment and conviction thereon.

Constitution of 1868, Article III:

Sec. 2. The senate shall have the sole power to try impeachments. When sitting for that purpose the members shall be on oath or affirmation, and shall be presided over by one of the judges of the supreme

court, selected for that purpose by a viva voce vote of the senate; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgments in cases of impeachments shall not extend further than removals from office and disqualification to hold and enjoy any office of honor, trust, or profit within this State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law. (P. 416.)

Constitution of 1868, Article V:

Sec. 9. The judges of the supreme and superior court, the attorney-general, solicitors-general, and the district judges and attorneys shall be appointed by the governor, with the advice and consent of the senate, and shall be removable by the governor on the address of two-thirds of each branch of the general assembly, or by impeachment and conviction thereon. (Page 421.)

STATES ADMITTED AFTER THE ORIGINAL THIRTEEN.

ALABAMA.

Constitution of 1819, Article V, "Judiciary department:":

Sec. 12. Chancellors, judges of the supreme court (judges of the circuit courts, and judges of the inferior courts), shall be elected by joint vote of both houses of the general assembly. (Page 40.)

Sec. 13. The judges of the several courts in this State shall hold their offices during good behavior; and for wilful neglect of duty, or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly: *Provided, however*, That the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journal of each house: *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively.

IMPEACHMENTS.—Sec. 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than removal from office and to disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

Constitution of 1865, Article VI, "Judicial department:":

Sec. 12. * * * for any wilful neglect of duty, or any other reasonable cause, which shall not be a sufficient ground of impeachment, the governor shall remove any judge on the address of two-thirds of each house of the general assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further*, That the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, before any vote for such address; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively. (Page 58.)

Article VII:

Sec. 7. All civil officers of the State, whether elected by the people or by the general assembly or appointed by the governor, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law. (Page 59.)

Constitution of 1867, Article IV:

Sec. 23. All State officers may be impeached for any misdemeanor in office, but judgment shall not extend further than removal from office and disqualification to hold office under the authority of this State. The party impeached, whether convicted or no, shall be liable to indictment, trial, and judgment according to law. (Page 65.)

Constitution of 1867, Article VI:

Sec. 12. * * * For any wilful neglect of duty, or any other reasonable cause WHICH SHALL NOT BE A SUFFICIENT GROUND OF IMPEACHMENT, the governor shall remove any judge on the address of two-thirds of each house of the general assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further*, That the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense before any vote for such address; and in all such cases the vote shall be taken by yeas and nays, and be entered on the journal of each house respectively. (Page 68.)

Constitution of 1875, Article VII, "Impeachment:":

Sec. 1. The governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education, and judges of the supreme court may be removed from office for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof or connected therewith, by the senate sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the house of representatives. (Page 89.)

Sec. 2. The chancellors, judges of the circuit courts, judges of the probate courts, solicitors of the circuits, and judges of inferior courts from which an appeal may be taken directly to the supreme court, may be removed from office for any of the causes specified in the preceding section, by the supreme court, under such regulations as may be prescribed by law.

ARKANSAS.

Constitution of 1836, Article IV:

Sec. 26. The governor, secretary of state, auditor, treasurer, and all the judges of the supreme, circuit, and inferior courts of law and equity, and the prosecuting attorneys for the State shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under this State. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried, and punished according to law. (Page 106.)

Sec. 27. * * * and for reasonable causes, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor shall, on the joint address of two-thirds of each branch of a legislature, remove from office the judges of the supreme and inferior courts: *Provided*, The cause or causes of removal be spread on the journals and the party charged be notified of the same and heard by himself and counsel before the vote is finally taken and decided.

Constitution of 1864, Article IV:

Sec. 24. (Page 125.) [Same as section 26, constitution of 1836, p. 106.]

Sec. 25. [Same as section 27, same constitution, p. 106.]

Constitution of 1868, Article VII:

Sec. 2. (Page 143.) The governor and all other civil officers under this State, etc. [Same as section 3, constitution Alabama, 1819, p. 40.]

Constitution of 1874, Article XV:

Sec. 1. The governor, and all State officers, judges of the supreme and circuit courts, chancellors, and prosecuting attorneys shall be liable to impeachment for high crimes and misdemeanors and gross misconduct in office, but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust, or profit under this State. An impeachment, whether successful or not, shall be no bar to an indictment.

Sec. 3. The governor, upon the joint address of two-thirds of all the members elected to each house of the general assembly, for good cause may remove the auditor, treasurer, secretary of state, attorney-general, judges of the supreme and circuit courts, chancellors, and prosecuting attorneys. (Page 174.)

CALIFORNIA.

Constitution of 1849, Article IV:

Sec. 19. The governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, surveyor-general, justices of the supreme court, and judges of the district courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide. (Page 188.)

COLORADO.

Constitution of 1876, Article XIII:

Sec. 2. The governor and other State and judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes or misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

Sec. 3. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office in such manner as may be provided by law. (Page 241.)

FLORIDA.

Constitution of 1838, Article V:

Sec. 12. * * * and at the expiration of five years the justices of the supreme court and the judges of the circuit courts shall be elected for the term of and during their good behavior, and for wilful neglect of duty, or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however*, That the cause or causes shall be stated at length in such address and entered on the journal of each house: *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and in such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively. (Page 322.)

Constitution of 1838, Article VI:

Sec. 22. (Page 325.) [Same as section 3, "Impeachments," Alabama constitution of 1819.]

Constitution of 1865, Article V:

Sec. 10. There shall be appointed by the governor, by and with the advice and consent of the senate, a chief justice and two associate justices of the supreme court of this State, who shall reside in this State and hold their office for the term of six years from their appointment and confirmation, unless sooner removed under the provisions of this constitution for the removal of judges by address or impeachment; and for wilful neglect of duty, or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of the general assembly: *Provided, however*, That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such removal shall pass, and in such case the vote shall be taken by yeas and nays and entered on the journal of each house, respectively, and in case of the appointment to fill a vacancy in said offices the person so appointed shall only hold office for the unexpired term of his predecessor. (Page 339.)

Article VI:

Sec. 18. (Page 341.) [Same as section 3, "Impeachments," Alabama constitution of 1819, p. 40.]

Constitution of 1868, Article V:

Sec. 28. The governor, lieutenant-governor, members of the cabinet, justices of the supreme court, and judges of the circuit court shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other officers who shall have been appointed to office by the governor, and by and with the consent of the senate, may be removed from office upon the recommendation of the governor and consent of the senate, but they shall nevertheless be liable to indictment, trial, and punishment according to law for any misdemeanor in office. All other civil officers shall be tried for misdemeanors in office in such manner as the legislature may provide. (Page 351.)

Article XVII:

Sec. 9. In addition to other crimes and misdemeanors for which an officer may be impeached and tried shall be included drunkenness and other dissolutions. Incompetency, malfeasance in office, gambling, or any conduct detrimental to good morals shall be considered sufficient cause for impeachment and conviction. Any officer, when impeached by the assembly, shall be deemed under arrest and shall be disqualified from performing any of the duties of his office until acquitted by the senate. But any officer so impeached and in arrest may demand his trial by the senate within ten days of the date of his impeachment. (Page 361.)

Constitution of 1868, Article IX:

That the following portion of section 9, Article XVII, of the constitution is hereby abrogated:

"Any officer when impeached by the assembly shall be deemed under arrest and shall be disqualified from performing any of the duties of his office until acquitted by the senate; but any officer so impeached and in arrest may demand his trial by the senate within one year from the date of his impeachment." (Page 365.)

IDAHO.

Constitution of 1889, Article V:

SEC. 3. The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law. (Page 469.)

SEC. 4. The house of representatives solely shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds of the senators elected.

ILLINOIS.

Constitution of 1818, Article II:

SEC. 23. (Page 441.) The governor and all other civil officers under this State, etc. [same as section 3, constitution of Alabama, 1819, page 401.]

Article IV:

SEC. 5. The judges of the inferior courts shall hold their offices during good behavior, but for ANY REASONABLE CAUSE WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, both the judges of the supreme and inferior courts shall be removed from office on the address of two-thirds of each branch of the general assembly: *Provided, however,* That no member of either house of the general assembly nor any person connected with a member by consanguinity or affinity shall be appointed to fill the vacancy occasioned by such removal. (Page 444.)

Constitution of 1848, Article II:

SEC. 28. The governor, and other civil officers under this State, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 452.)

Constitution of 1848, Article V:

SEC. 12. For any reasonable cause, to be entered on the journals of each house, WHICH SHALL NOT BE A SUFFICIENT GROUND FOR IMPEACHMENT, both justices of the supreme court and judges of the circuit court shall be removed from office on the vote of two-thirds of the members elected to each branch of the general assembly: *Provided, however,* That no member of either house of the general assembly shall be eligible to fill the vacancy occasioned by such removal: *Provided also,* That no removal shall be made unless the justice or judge complained of shall have been served with a copy of the complaint against him and shall have an opportunity of being heard in his defense. (Page 460.)

Constitution of 1870, Article IV:

SEC. 24. The house of representatives shall have the sole power of impeachment, but a majority of all the members elected must concur therein. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath, or affirmation, to do justice according to law and evidence. When the governor of the State is tried, the chief justice shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected. But judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under the government of this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law. (Page 476.)

SEC. 15. The governor and all civil officers of this State shall be liable to impeachment for any misdemeanor in this State. (Page 478.)

INDIANA.

Constitution of 1816, Article III:

SEC. 24. The governor and all civil officers of this State shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment in such cases shall not extend, etc. [Same as in other sections.] (Page 503.)

Constitution of 1851, Article VI:

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the house of representatives, to be tried by the senate, or by a joint resolution of the general assembly, two-thirds of the members elected to each branch voting in either case therefor. (Page 520.)

SEC. 12. Any judge or prosecuting attorney who shall have been convicted of corruption or other high crime may, on information, in the name of the State, be removed from office by the supreme court, or in such other manner as may be prescribed by law. (Page 521.)

IOWA.

Constitution of 1846, Article III:

SEC. 20. (Page 540.) The governor, judges of the supreme and district courts, and other State officers shall be liable to impeachment for any misdemeanor or malfeasance in office, etc. [Same as Florida constitution, 1868, Article V, p. 351.]

Constitution of 1857:

SEC. 20. (Page 556.) [Same as section 20, Iowa constitution of 1846, Article III, p. 540.]

KANSAS.

Constitution of 1855, Article VI:

SEC. 16. Judges may be removed from office by concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein; but no such removal shall be made upon complaint, the substance of which shall be entered upon the Journal, nor until the party charged shall have had notice thereof and an opportunity to be heard. (Page 588.)

Constitution of 1857, Article VI:

SEC. 23. (Page 605.) The governor and all civil officers, etc. [same as in constitution of Illinois of 1848, Article II, section 28, page 452.]

Constitution of 1858, Article IV:

SEC. 22. (Page 618.) [Same as Illinois constitution, section 28, page 452.]

Article VI:

SEC. 14. Judges may be removed from office by concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein; but no such removal shall be made, except upon complaint, the substance of which shall be entered upon the Journal, nor until the party charged shall have notice thereof and an opportunity to be heard.

Constitution of 1859, Article II:

SEC. 28. The governor and all other officers under this constitution shall be subject to impeachment for any misdemeanor in office, etc., as in other sections. (Page 634.)

Article III, section 15:

Justices of the supreme court and judges of the district court may be removed from office by resolution of both houses, if two-thirds of

the members of each house concur. But no such removal shall be made, etc. [Same as section 14, constitution Illinois, p. 452.]

KENTUCKY.

Constitution of 1792:

Article IV. (Page 651.) [Same as section 3, constitution of Alabama, p. 40.]

Article V. The judges of both the supreme and inferior courts shall hold their offices during good behavior; but, for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Constitution of 1799, Article IV:

SEC. 3. (Page 662.) [Same as section 13, Alabama constitution, p. 40.]

Article V, page 663, section 3. [Same as section 3, Alabama constitution of 1819, p. 40.]

Constitution of 1850, Article IV:

SEC. 3. For any reasonable cause the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required shall be stated at length in such address and on the Journal of each house. (Page 675.)

Constitution of 1850, Article V:

SEC. 3. (Page 678.) [Same as section 3, constitution of Alabama of 1819, p. 40.]

LOUISIANA.

Constitution of 1812, Article IV:

SEC. 5. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; but, for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT, the governor shall remove any of them on the address of three-fourths of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required shall be stated at length in the address and inserted on the journal of each house. (Page 705.)

Article V:

SEC. 3. (Page 705.) [Same as section 3, Alabama constitution, 1819, p. 40.]

Constitution of 1845, Title IV:

ART. 73. The judges of all courts shall be liable to impeachment; but, for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT, the governor shall remove any of them on the address of three-fourths of the members present of each house of the general assembly. In every such case the cause or causes for which such removal may be required shall be stated at length in the address and inserted in the journal of each house. (Page 718.)

Title V:

ART. 86. Judgments in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust, or profit under this State; but the parties convicted shall, nevertheless, be subject to indictment, trial, and punishment, according to law. (Page 719.)

ART. 87. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of their functions during the pendency of such impeachment. The appointing power may make a provisional appointment to replace any suspended officer until the decision of the impeachment.

ART. 88. The legislature shall provide by law for the trial, punishment, and removal from office of all other officers of the State by indictment or otherwise.

Constitution of 1852, Title IV:

ART. 73. (Page 732.) [Same as article 73, Louisiana constitution of 1845, page 718.] Title V:

ARTS. 87, 88, 89. (Page 733.) [All same as articles 86, 87, and 88 of Louisiana constitution of 1845, page 718.]

Constitution of 1864, Title V:

ART. 77. The judges of all courts shall be liable to impeachment; but for ANY REASONABLE CAUSE WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT the governor shall remove any of them on the address of a majority of the members elected to each house of the general assembly. In every such case the cause or causes for which such removal may be required shall be stated at length in the address and inserted in the journal of each house. (Page 747.)

Title VI:

ARTS. 87, 88, 89. (Page 748.) [Same as articles 86, 87, 88 of Louisiana constitution of 1845, page 718.]

Constitution of 1868, Title IV:

ART. 81. The judges of all courts shall be liable to impeachment for crimes and misdemeanors. For any reasonable cause the governor shall remove any of them, etc. [Same as article 77, page 747, constitution 1864.] (Page 763.)

Title V:

ART. 97. (Page 765.) [Same as article 86, Title V, page 719, Louisiana constitution of 1845.]

MAINE.

Constitution of 1820, Article IV, part 2:

SEC. 7. The senate shall have the sole power to try all impeachments, and, when sitting for that purpose, shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Their judgment, however, shall not extend further than to removal from office and disqualification. [Same as other like sections.] Page 793.)

Article IX:

SEC. 5. Every person holding any civil office under this State may be removed, by impeachment, for misdemeanor in office; and every person holding any office may be removed by the governor, with the advice of the council, on the address of both branches of the legislature. But, before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense. (Page 798.)

Constitution of 1820, amended 1839, Article III:

All judicial officers now in office, or who may be hereafter appointed, shall, from and after the 1st day of March, in the year 1840, hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the legislature to the executive) and no longer, unless reappointed thereto. (Page 804.)

MICHIGAN.

Constitution of 1835, Article VIII:

SEC. 1. The house of representatives shall have the sole power of impeaching all civil officers of the State for corrupt conduct in office or

for crimes and misdemeanors; but a majority of all the members elected shall be necessary to direct an impeachment. (Page 989.)

SEC. 2. * * * judgment, in cases of impeachment, shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

SEC. 3. FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR THE IMPEACHMENT OF THE JUDGES OF ANY OF THE COURTS, the governor shall remove any of them on the address of two-thirds of each branch of the legislature; but the cause or causes for which such removal may be required shall be stated at length in the address.

Constitution of 1850, Article XII:

SEC. 1. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes and misdemeanors. (Page 1006.)

Constitution of 1850, Article XII:

SEC. 2. * * * judgment, in case of impeachment, shall not extend further than removal from office; but the party convicted shall be liable to punishment according to law. (Page 1006.)

SEC. 4. No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

SEC. 5. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer until he shall be acquitted, or until after the election and qualification of a successor.

SEC. 6. FOR REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR THE IMPEACHMENT OF A JUDGE, the governor shall remove him on a concurrent resolution of two-thirds of the members elected to each house of the legislature; but the cause for which such removal is required shall be stated at length in such resolution.

MINNESOTA.

Constitution of 1857, Article XIII; "Impeachment and removal from office:"

SEC. 1. The governor, secretary of state, treasurer, auditor, attorney-general, and the judges of the supreme and district courts may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office, etc., as in other sections. (Page 1040.)

SEC. 2. The legislature of this State may provide for the removal of inferior officers from office for malfeasance or nonfeasance in the performance of their duties.

SEC. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

MISSISSIPPI.

Constitution of 1817, Article V:

SEC. 9. (Page 1062.) [Same as section 13, constitution Alabama, p. 40.]

SEC. 3. [Same as section 3, Alabama constitution, p. 40.]

Constitution of 1832, Article IV:

SEC. 27. (Page 1073.) The judges of the several courts of this State, for wilful neglect of duty or other reasonable cause, shall be removed by the governor on the address of two-thirds of both houses of the legislature; the address to be joint vote of both houses. The cause or causes for which such removal shall be required, etc. [Like Article VI, constitution Alabama of 1865, p. 58.]

Constitution of 1832, Article VI:

SEC. 3. (Page 1076.) [Same as section 3, Alabama constitution of 1819, p. 40.]

Constitution of 1868, Article IV:

SEC. 28. The governor and all other civil officers under this State shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. (Page 1085.)

SEC. 30. Judgments in such cases shall not extend further than removal from office and disqualification to hold any office of honor, etc., as in other sections.

SEC. 31. [Same as section 27 of Arkansas constitution of 1836, p. 106.]

MISSOURI.

Constitution of 1820, Article III:

SEC. 29. (Page 1108.) [Same as section 26, Article IV, Arkansas constitution, 1836, p. 106.]

Article V:

SEC. 16. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two-thirds of each house of the general assembly to the governor for that purpose, but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof, and he shall have the right to be heard in his defense in such manner as the general assembly shall by law direct; but no judge or chancellor shall be removed in this manner for any cause for which he might have been impeached.

Constitution of 1865, Article VI:

SEC. 19 (p. 1151). [Same as section 16, Article V, constitution 1820, p. 1108.]

Article VII:

SEC. 1. (p. 1152). [Same as section 19, constitution 1849, California, p. 198.]

Constitution of 1875, Article VI:

SEC. 1. The governor, lieutenant-governor, secretary of state, State auditor, State treasurer, attorney-general, superintendent of public schools, and judges of the supreme, circuit, and criminal courts, and of the St. Louis court of appeals shall be liable to impeachment for high crimes or misdemeanors, and for misconduct, habits of drunkenness, or oppression in office. (Page 1182.)

MONTANA.

Constitution of 1889, Article V:

SEC. 17. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law. (Page 1206.)

SEC. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office in such manner as may be provided by law.

NEBRASKA.

Constitution of 1866, Article II:

SEC. 29. The governor, secretary of state, auditor, treasurer, and judges of the supreme and district court shall be liable to impeachment for any misdemeanor in office, etc., as in other sections. (Page 1207.)

Constitution of 1875, Article III:

SEC. 14. The senate and house of representatives in joint convention shall have the sole power of impeachment; but a majority of the members elected must concur therein. * * * A notice of an impeachment of any officer other than a justice of the supreme court shall be forthwith served upon the chief justice by the secretary of the senate, who shall thereupon call a session of the supreme court to meet at the capital within ten days after such notice to try the impeachment. A notice of an impeachment of a justice of the supreme court shall be served by the secretary of the senate upon the judge of the judicial district within which the capital is located, and he thereupon shall notify all the judges of the district court in the State to meet with him within thirty days at the capital to sit as a court to try such impeachment, which court shall organize by electing one of its members to preside. (Page 1217.)

NEVADA.

Constitution of 1864, Article VII:

SEC. 2. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for misdemeanor or malfeasance in office. (Page 1257.)

SEC. 3. [Same as section 12, Illinois constitution, 1848, p. 460.]

NORTH DAKOTA.

Constitution, Article XIV:

SEC. 196. The governor and other State and judicial officers, except county judges, justices of the peace, and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification, etc., as in other sections. (Page 127.)

SEC. 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, in such manner as may be provided by law.

OHIO.

Constitution of 1802, Article I:

SEC. 24. (Page 1457.) [Same as section 3, Alabama constitution, 1819, p. 40.]

Constitution of 1851, Article II:

SEC. 24. (Page 1468.) The governor, judges, and all State officers may be impeached for any misdemeanor in office, etc., as in other sections.

Constitution of 1851, Article IV:

SEC. 17. (Page 1472.) [Same as section 16, Kansas constitution of 1855, p. 588.]

OREGON.

Constitution of 1857, Article VII:

SEC. 19. Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law. (Page 1501.)

SEC. 20. The governor may remove from office a judge of the supreme court or prosecuting attorney, upon the joint resolution of the legislative assembly in which two-thirds of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause, stated in such resolution.

SOUTH DAKOTA.

Constitution of 1890, Article XVI:

SECS. 3 and 4. (Page 393.) [Like sections 196 and 197 of constitution of North Dakota, p. 127.]

TENNESSEE.

Constitution of 1796, Article IV:

SEC. 4. The governor and all civil officers under this State shall be liable to impeachment for any misdemeanor in office. (Page 1671.)

Constitution of 1834, Article V:

SEC. 4. The governor, judges of the supreme court, judges of inferior courts, chancellors, attorneys for the State, and secretary of state shall be liable to impeachment whenever they may, in the opinion of the house of representatives, commit any crime in their official capacity which may require disqualification.

SEC. 6. Judges and attorneys for the State may be removed from office by a concurrent vote of both houses of the general assembly, each house voting separately; but two-thirds of all the members elected to each house must concur in such vote. (Page 1683.)

Constitution of 1870, Article V:

SEC. 4. (P. 1703.) [Same as section 4, constitution of 1834, p. 1683.]

Article VI:

SEC. 6. Judges and attorneys for the State may be removed from office by a concurrent vote of both houses of the general assembly, each house voting separately, etc., same as section 6 immediately preceding. (Page 1704.)

TEXAS.

Constitution of 1836, Article VI:

SEC. 16. The president, vice-president, and all civil officers of the Republic shall be removable from office by impeachment for, and on conviction of, treason, bribery, and other high crimes and misdemeanors. (Page 1759.)

Constitution of 1845, Article IV:

SEC. 8. (Page 1772.) [Same as section 13, Alabama constitution, 1819, p. 40.]

Article IX:

SEC. 1. The power of impeachment shall be vested in the house of representatives. (Page 1780.)

SEC. 2. Impeachments of the governor, lieutenant-governor, attorney-general, secretary of state, treasurer, comptroller, and of the judges of the district courts shall be tried by the senate.

SEC. 3. Impeachments of judges of the supreme court shall be tried by the senate.

Constitution of 1866, Article IV:

SEC. 11. The judges of the supreme and district courts shall be removed by the governor, on the address of two-thirds of each house of the legislature, for wilful neglect of duty or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT: *Provided, however, That the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journals of each house: And provided further, That the cause or causes shall be notified to the judge so intended to be removed; and he shall be admitted to a hearing in his own defense before any vote for such address shall pass. And in all such cases the vote shall be taken by*

yeas and nays and entered on the journals of each house, respectively. (Page 1790.)

Article IX:

SECS. 2 and 3. (Page 1798.) [Same as sections 2 and 3, constitution of 1845, p. 1780.]

Constitution of 1868, Article V:

SEC. 10. (Page 1812.) [Same as first clause of section 11, constitution of 1866, p. 1790.]

Article VIII:

SECS. 2 and 3. (Page 1814.) [Same as sections 2 and 3, constitution of 1845, p. 1780.]

Constitution of 1876, Article XV:

SEC. 2. Impeachment of the governor, lieutenant-governor, attorney-general, treasurer, commissioner of the general land office, comptroller, and the judges of the supreme court, court of appeals, and district court shall be tried by the senate. (Page 1850.)

Address:

SEC. 8. [Same as section 11, constitution of 1866, Article IV, p. 1790.]

UTAH.

Constitution of 1895, Article VI:
SEC. 19. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office.

SEC. 21. All officers not liable to impeachment shall be removed for any of the offenses specified in this article in such manner as may be provided by law.

Article VIII:

SEC. 11. Judges may be removed from office by the concurrent vote of both houses of the legislature, each voting separately; but two-thirds of the members to which each house may be entitled must concur in such vote. The vote shall be determined by yeas and nays, and the names of the members voting for or against a judge, together with the cause or causes of removal, shall be entered on the journal of each house. The judge, against whom the house may be about to proceed, shall receive notice thereof, accompanied with a copy of the cause alleged for his removal, at least ten days before the day on which either house of the legislature shall act thereon.

VERMONT.

Constitution of 1793, chapter 11:
SEC. 24. Every officer of the State, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for maladministration. All impeachments shall be before the governor, or lieutenant-governor and council, who shall hear and determine the same and may award costs; and no trial or impeachment shall be a bar to a prosecution at law. (Page 1880.)

WASHINGTON.

Constitution of 1889, Article V:
SEC. 2. (Page 623.) [Like sections 3 and 4 of constitution of South Dakota, 1890, Art. XVI, page 393.]

WEST VIRGINIA.

Constitution of 1861, Article III:
SEC. 10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. (Page 1880.)

Article VI:

SEC. 13. Judges may be removed from office for misconduct, incompetence, or neglect of duty, or on conviction of an infamous offense by the concurrent vote of a majority of all the members elected to each branch of the legislature, and the cause of removal shall be entered on the journals. (Page 1886.)

Constitution of 1872, Article IV:

SEC. 9. Any officer of the State may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. (Page 1997.)

Article VII:

SEC. 18. Judges may be removed from office by concurrent vote of both houses of the legislature, where, from age, disease or mental or bodily infirmity, they are incapable of discharging the duties of their offices. But two-thirds of the members elected to each house must concur in such vote; and the cause of removal shall be entered upon the journal of each house. (Page 2007.)

WISCONSIN.

Constitution of 1848, Article VII:
SEC. 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this State for corrupt conduct in office or for crimes and misdemeanors, but a majority of all the members elected shall concur in an impeachment. (Page 2034.)

SEC. 13. Any judge of the supreme or circuit court may be removed from office by address of both houses of the legislature if two-thirds of all the members elected to each house concur therein; but no removal shall be made by virtue of this section unless the judge complained of shall have been served with a copy of the charges against him as the ground of address, and shall have had an opportunity of being heard in his defense. On the question of removal the yeas and noes shall be entered on the journal. (Page 2036.)

WYOMING.

Constitution, Article II:
SEC. 18. (Page 769.) [Same as section 17, constitution of Montana, 1889, Article V, page 1206.]

Mr. THURSTON. Call Mr. F. W. Marsh.

Frederick W. Marsh sworn and examined.

By Mr. THURSTON:

Question. Where do you reside?

Answer. Pensacola, Fla.

Q. What is your profession, if any?

A. I am an attorney at law.

Q. How long have you been practicing law?

A. Nearly eleven years.

Q. Where?

A. Pensacola, Fla.

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Q. What official position, if any, have you held, or now hold?
A. I am clerk of the United States circuit and district courts for the northern district of Florida.

Q. And have been for how long?

A. For nearly ten years.

Q. Are you familiar with the record of the case of Florida McGuire v. Others that was pending in your court on November 5, 1901?

A. Yes, sir.

Q. Will you state as to whether or not in that suit one Edgar was a defendant?

A. Charles H. Edgar, described as living in New York City, was named in the praecipe for process for summons as a party defendant, and also in the declaration. But no service was made on him in that suit, and he did not appear in the suit.

Q. Were you present in court on November 5, 1901?

A. Yes, sir.

Q. Were you there when Judge Swayne made a statement from the bench in reference to a letter which he had received asking him to recuse himself in the trial of the Florida McGuire case?

A. Yes, sir; I was present.

Q. Do you remember as to whether or not Judge Paquet was there?

A. He was present.

Q. Was Mr. Belden?

A. I would not state definitely. My opinion is that he was not there.

Q. Was Mr. Davis?

A. I do not think Mr. Davis was there on November 5.

Q. Will you please tell us what the substance of that statement of the judge was?

A. The criminal docket was being disposed of, and Judge Paquet came into court. The judge suspended proceedings and called him to the bench, or called him up close to the bench, and told him that he was in receipt of a letter from him, and that he had not answered it owing to the fact that it brought to his attention matters which he thought should be disposed of in court when the other side was represented. Mr. Blount was present at the time.

He then took up the suggestions in the letter, and stated in answer to them that during the past summer he, on behalf of a relative—at that time he stated "a relative"—had negotiated for a certain block of land in the city of Pensacola known as "block 91 of the new city tract;" that during the negotiations a quitclaim deed had been forwarded for block 91, and on inquiry it was found—on inquiry from himself—it was ascertained from the agents that the reason the quitclaim was offered was that the party did not care to warrant the title against the claim of the Caro heirs.

Q. Was that the claim being litigated in the Florida McGuire case?

A. Yes.

Q. Now proceed.

A. That thereupon this deed was returned and all negotiations for that property terminated, that the matter had not been formally called to his attention in the regular way; but inasmuch as a letter had been addressed to the court in this form, unless the parties insisted on a formal application he would then undertake to dispose of it in that way; and he said that he thought under the circumstances he was qualified to try the case and felt in duty bound to go on. On the following Friday, the 8th, Judge Paquet—

Q. One moment, Mr. Marsh, before you go further. Was the letter that Judge Swayne had received presented there in court?

A. Yes, sir; Judge Swayne had the letter at the time.

Q. What became of it?

A. Judge Paquet requested to withdraw the letter, and the judge handed it to me and I stepped over and handed it to Judge Paquet.

Q. Now, please go on and state what took place on Friday.

A. On Friday morning—I think it was Friday morning between 10 and 11 o'clock—Judge Paquet, Mr. Belden, and Mr. Davis and their clients came into court, and Judge Swayne then stated to these attorneys, referring to the previous declaration he had made in relation to his connection with this tract, and said that he desired to state further in that connection that the relative referred to was his wife, and that she had been looking for an opportunity to invest money, her own money, inherited from some relative's estate—her father's estate—I think.

Q. Were you present in court generally during that week commencing November 5?

A. Yes, sir; I was present all the time during the session of the court.

Q. How frequently was Mr. Davis there?

A. Mr. Davis came in, as I recall now, either on Wednesday or Tuesday morning. I think it was on Wednesday morning the first I noticed him. He came in accompanied by Judge Paquet and Mr. Belden and J. C. Keyser and Alberto Caro. He came in again Thursday morning, was present in the court at the times that these other parties were present, also on Friday and Saturday.

Q. During those times did Mr. Davis have anything to do or make any actual suggestion or inquiry with reference to the Florida McGuire case?

A. The only thing I noticed was that he was in conversation; during the presence of these attorneys in court he seemed to be conversing with them at various times.

Q. Did Mr. Davis at any time during that week speak to you about the case?

A. I do not think that he spoke to me, except to make some inquiries about how the docket was progressing. I spoke to him about it.

Q. Well, state what was said.

A. At the time of the argument that Judge Paquet was making to the court, asking that the case be postponed until the Thursday of the following week, among other remarks he said that, owing to the large number of witnesses, it would be impossible for them to get the witnesses subpoenaed in time for the hearing Monday morning.

I came down from my desk and went over to Mr. Davis and told Mr. Davis that if they desired to get any witnesses summoned that night I would stay in my office as long as he desired; that I would get out any summons for witnesses that they might file a praecipe for. Mr. Davis then said to me, "I will see about it," and that terminated the conversation. He went from me over to Judge Paquet and held some consultation with him. They then, after the termination of the proceedings, went out of the courtroom, and I saw nothing further of them that evening. I stayed in my office until about 7 o'clock transacting—closing up—some business that had accumulated, and heard nothing further from them.

Q. Were you ready and prepared at any time that evening to have issued any subpoena that they might desire for witnesses?

A. I could have gotten out summons for any number they could have filed—any reasonable number.

Q. In what length of time?

A. I could have summoned thirty or forty witnesses in ten to fifteen minutes—that is, gotten the summons out.

Q. Filled in and signed the blanks?

A. Yes, sir; blank forms; they require very little time.

Q. On that application Saturday afternoon, the 8th, at the close of the criminal docket, and when the request was made for a postponement, was any written application made?

A. For continuance or postponement?

Q. Yes, sir.

A. No, sir.

Q. Was there ever?

A. No, sir.

Q. What did Judge Swayne state from the bench when that application was made?

A. Judge Swayne stated that there was no business requiring the attendance of a jury during the ensuing week except this case; that if the counsel agreed he would set the case for Thursday; if they did not agree he would have to take it up in the usual order. On the suggestion of Mr. Blount that he demanded a trial on the ensuing Monday, the judge stated that he would set the case for trial Monday morning at 10 o'clock unless some showing was made for continuance under the rule.

Q. Showing made on Monday morning?

A. Showing made on Monday morning at 10 o'clock, when the case was set.

Q. Was there any suggestions or any demand made by the judge that the case should proceed to trial on that Saturday afternoon?

A. No, sir. It was a late hour and there never was any intimation that the case was to be taken up at that time.

Q. Did Judge Swayne make any statement at that time or in relation to that matter of his purpose to leave the city at an early day?

A. No, sir; not the slightest suggestion of anything of the kind.

Q. Do you know personally how long Judge Swayne remained in Pensacola at that time?

A. Yes, sir; I do. He was then living in the Simmons cottage. His wife and family were there. He continued to hold court in Pensacola during all that week, in Tallahassee the ensuing week, and in Pensacola from the time of his return from Tallahassee until the middle of April of the ensuing year. He was there in Pensacola all of that time. I will state in that

connection that the records of the court disclose the fact that Judge Swayne was present and presiding during all that time during sessions of the court.

Mr. MALLORY. I should like to ask what year was that?

Mr. THURSTON. The period was the period beginning November 5, 1901, and continuing down to April, 1902. [To the witness.] Were you present in court at the time of the proceedings under the rule to show cause why Belden, Davis, and Paquet should not be adjudged guilty of contempt?

A. I was.

Q. State, in substance, what occurred.

A. Mr. Davis and Mr. Belden appeared at 10 o'clock, as cited, and read their answer. Mr. Davis read the answer. The counsel representing the court called as the first witness, I think, Mr. Beverly H. Burton, the deputy clerk of the court.

By Mr. HIGGINS:

Q. What court?

A. The State court—the deputy clerk of the court of Escambia County, Fla. He testified that he had been called up by Mr. Keyser at his home about 8.20 Saturday night—the previous Saturday night—and had been requested to go to his office and issue a summons ad respondendum in ejectment against Charles Swayne; that on that praecipe were signed the names of Simeon Belden, Louis P. Paquet, and E. T. Davis; that Mr. Davis was an attorney of the State court, and he felt bound to comply with the request; that he went down to his office—

Mr. MALLORY. I would like to inquire what this statement is. Who made the statement the witness is detailing?

Mr. THURSTON. Mr. President, I am asking the witness now for the proceedings that took place in court on the trial of the contempt case.

Mr. MALLORY. The witness seems to be repeating the statement of somebody else.

Mr. THURSTON. Mr. President, he is now stating what the witness testified before the court on the contempt proceeding, and that testimony never having been recorded, what it was has been gone into and related by the witnesses for the managers.

The PRESIDING OFFICER. The witness is stating what Mr. Burton, the clerk of the court, testified.

Mr. THURSTON. The clerk of the State court.

The WITNESS. Mr. Burton is here, and I suggest that he make his own statement in that respect.

Q. I should like you to state what took place in court there. You can go on with that line.

A. The next witness then was, I think, Mr. John Denham.

Q. Who was he?

A. He was the editor of the Pensacola Press. He was unable to identify a certain document, and the city editor, Mr. William P. Barker, was then placed on the stand and identified a certain document in connection with the newspaper article that had been published on Sunday morning.

Q. (Producing paper.) Is that the original document that he identified?

A. (Examining.) Yes, sir; that is the document produced by Mr. Barker.

Q. Do you know in whose handwriting that is?

A. Mr. Louis P. Paquet told me personally that it was his own handwriting.

Q. Are you acquainted with his handwriting?

A. Yes, sir.

Q. Judging from your knowledge of his handwriting, state as to whether or not that is in his handwriting.

A. Yes, sir; I think it is.

Q. And in addition to that he told you so himself?

A. Yes, sir.

Mr. THURSTON. Mr. President, we offer this in evidence, being the manuscript copy of the article which appeared in the Pensacola paper of Sunday morning, November 10, 1901.

The WITNESS. There is a certified copy of it there.

Mr. THURSTON. I will ask to have this read, and for the convenience of the Secretary ask that he read from the copy.

Mr. Manager DE ARMOND. Mr. President, I think it is already in. We have no objection to its being put in two or three times, however.

Mr. THURSTON. It will take only a moment.

The Secretary read as follows:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract" on the eastern portion of the city, near Bayou Texas, by the filing of a praecipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which is part of the

property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service.

Filed November 12, 1901.

F. W. MARSH, Clerk.

UNITED STATES OF AMERICA, Northern District of Florida.

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Q. (By Mr. THURSTON.) Mr. Marsh, will you continue your statement of the testimony that was given in the case?

A. Mr. J. C. Keyser was also summoned and testified that he had received the *præcipe* from Louis P. Paquet, Simeon Belden, and E. T. Davis; that he was present—

Q. Did he say where?

A. At the store of George W. Pryor; that he was present at a conference at which that *præcipe* had been signed.

Q. Who was Keyser?

A. J. C. Keyser was one of the parties who claimed to have an interest in this tract and who had been in and about the court with these attorneys.

Q. Who was Pryor, at whose store they met?

A. Mr. Pryor had paid all costs in the case, had paid my costs, and had signed the bond for costs of the plaintiff in the case. That is all I know personally of his connection with it.

Q. Now, what did Keyser testify to?

A. I have just stated that.

Q. Oh, yes. Calling your attention to the newspaper witness, what was his name?

A. E. P. Barker.

Q. Did he state anything as to what person brought this manuscript of the article to him, and when?

A. Yes, sir; he stated that Mr. George W. Pryor had brought the article to him late Saturday evening; that he had taken it and published it as a news item.

Q. In what paper?

Mr. SPOONER. I ask that the answer may be repeated.

The PRESIDING OFFICER. The Reporter will read the last question and answer.

The Reporter read as follows:

Q. Did he state anything as to what person brought this manuscript of the article to him, and when?

A. Yes, sir; he stated that Mr. George W. Pryor had brought the article to him late Saturday evening; that he had taken it and published it as a news item.

Q. (By Mr. THURSTON.) What further testimony was presented?

A. I do not recall any other witnesses.

Q. Did the respondents in that proceeding present, Belden and Davis, ask to call any witnesses?

A. They called Mr. W. A. Blount and Mr. William Fisher, had them sworn; asked Mr. Blount, I think, two questions and Mr. Fisher one or two.

Q. What did they ask them, if you remember?

A. They asked them if they were interested in that litigation, in the property in issue in the Florida McGuire case.

Q. What did they answer?

A. They answered that they were.

Q. Who was Mr. Fisher?

A. Mr. William Fisher was an attorney at Pensacola, Fla.

Q. And was then and there associated with Mr. Blount in presenting the contempt case to the court?

A. Yes, sir. Mr. Fisher is now dead.

Q. Yes; that is what I was about to ask you. Did Davis or Belden make any argument in the case?

A. Mr. Davis produced a copy of the American and English Encyclopedia of Law, I think it was the second edition, and read some citations there on the construction to be given to the act of 1831, known as section 725 of the Revised Statutes.

Q. Did either of them testify in the case?

A. No, sir.

Q. Did either of them offer to be sworn and testify?

A. No, sir.

Q. Were they denied or refused any request for time?

A. No, sir; there was no suggestion.

Q. Were they refused or denied any opportunity to present witnesses?

A. No, sir; all the time that was necessary for the trial was given. There was no haste.

Q. Were they refused or denied the right to make such argument as they desired?

A. No, sir.

Mr. Manager PALMER. Mr. President, I am not objecting to this testimony, but it seems to me that the proper function of the witness is to state what did happen and not what did not happen.

Mr. THURSTON. Mr. President, if I have fallen into the unfortunate habit of asking leading questions it is because I have been so splendidly schooled in that line in the last few days.

The PRESIDING OFFICER. Neither the managers nor counsel for the respondent ought to ask leading questions.

Mr. Manager PALMER. The objection is not that the question is leading, but the objection is that counsel is asking witness to tell what did not happen instead of what did happen; and he has taken a great deal of time to do it in.

The PRESIDING OFFICER. The question might have been asked in this form, whether Mr. Davis, Mr. Belden, or Mr. Paquet asked for any time to be given for them to prepare their defense.

Q. (By Mr. THURSTON.) At the conclusion of that hearing, Mr. Marsh, will you state as nearly as you can what Judge Swayne said and did?

A. I think I can best answer that question by saying that I read carefully Mr. Blount's summing up of that.

Mr. Manager PALMER. If the court please, I object to that. We do not care about hearing of Mr. Blount's testimony. If the witness knows anything about the subject-matter let him state it.

The PRESIDING OFFICER. The objection is sustained.

The WITNESS. The judge, as I recollect, took up the reference to the rule and what was charged in the rule. He then took up the answer and pointed out the allegations in the rule that had not been answered to, and called attention to the evasive manner of the answer, and that it was in no way responsive to the rule. He took up next, that part of the answer made by Mr. Davis alone, in which he took objection to the jurisdiction of the court on the ground that he had not asked his name to be placed of counsel until Monday morning, and said that they had in no way responded to the charge against him; that the acts in and about the court room had led the court to believe that he was of counsel in the case previous to that time. He then commented on the character of the testimony adduced; that the bringing of the suit Saturday night late, and the instructions given to the sheriff to serve the processes Saturday night by all means or by all hazards, and that the evident haste of that suit led the court to believe that there was but one purpose, and that was to influence the court in its action in the case at the time it was to be called for Monday morning; that the attempt to dismiss the case had in his mind been an afterthought and could not affect the contemptuous conduct.

He then characterized the profession of the law as the highest calling to which, in his opinion, a man could be called; that it required the utmost observance of the rules of courteous demeanor toward one another and toward the court; that the conduct of these attorneys had been very different in that respect; that the course they had pursued was crooked, or appeared to the court to be crooked, and had a vicious tendency. He spoke of the age of one of the defendants; said it was the saddest duty that he had ever had to perform in his twelve years upon the bench, and that he had looked for some extenuating circumstance in his case, but had been unable to find any that would differentiate his case from that of Mr. Davis. Then he proceeded to pronounce the sentence, which was entered, with this exception, that he had included in the sentence a provision which disbarred the attorneys from practicing in his court for two years. This portion of the sentence was retracted almost immediately—before it was entered.

Q. (By Mr. THURSTON.) Was the attention of the court at that time or in the court that day called by Belden or Davis, or any representative of theirs, to the fact that the statute only permitted a sentence of fine or imprisonment, whereas a judgment of both had been entered?

A. No, sir.

Q. What afterwards became of that portion of that proceeding remaining against the defendant Paquet?

A. Judge Paquet was served by the marshal of the district in Louisiana with the rule after the decision on the writ of habeas corpus. He appeared and filed an answer, which raised the question of the jurisdiction of the court in his case. He sued out, shortly after that, a writ of prohibition in the circuit court of appeals, which petition was denied, and he came over personally and presented a written statement or apology in court.

Q. (Handing paper to the witness.) Is that the original written statement presented Mr. Paquet?

A. (Examining paper.) Yes, sir; that is the original.

Q. Does it show the filing of it?

A. Yes, sir; the file mark is on there. It has been in my possession ever since.

Mr. THURSTON. Mr. President, this is the document as to the existence of which some doubt was expressed on yesterday. I do not ask to have it read, because we presented and had put into the testimony an exact copy on yesterday. I present it now for the mere purpose of removing any doubt in the minds of the Senate or of the managers that that document did and does exist. [To the witness.] What was the apparent physical condition of Mr. Belden at the time of these contempt proceedings?

A. Well, Mr. Belden came into the court in the usual way. I saw no evidence of feebleness, except that one corner of his mouth was drawn a little bit up, and his lower eyelid on the right-hand side was drawn a little down. It gave his features a slightly distorted appearance.

Q. Was either Davis or Belden asked any questions on that hearing by Judge Swayne?

A. No, sir. My recollection is quite clear on that, that Mr. Belden never said a word during the entire hearing.

Mr. Manager PALMER. That is not any answer to the question.

The WITNESS. Mr. Davis was presented by Mr. Blount with this paper that Mr. Barker produced. Mr. Blount asked him if that was his handwriting, and Mr. Davis said "No; it was not," and Mr. Blount asked him whose handwriting it was, and he said he thought it was Judge Paquet's.

Q. Did Judge Swayne from the bench ask either of them any questions?

A. No, sir; the paper had not been in Judge Swayne's possession at that time.

Q. Was any statement made at that time by either Davis or Belden, in substance, that they had never heard the Judge's statement from the bench of the reasons why he had refused to recuse himself?

A. There was no statement made by either Mr. Davis or Mr. Belden except what was contained in their answer and read.

Q. Did either of them make any statement to the effect that they had decided to dismiss the Florida McGuire suit before removing the action against Judge Swayne in the State court?

A. No, sir; there was no such statement made.

Q. Did either of them make or offer to make any statement explaining what they had done, or seeking to show that it did not constitute a contempt?

Mr. Manager PALMER. Mr. President, I object to that question. We might as well raise the issue now as at any time.

The PRESIDING OFFICER. Will counsel repeat the question?

Mr. THURSTON. The Reporter will please repeat the question.

The Reporter read the question, as follows:

Q. Did either of them make or offer to make any statement explaining what they had done or seeking to show that it did not constitute a contempt?

Mr. Manager PALMER. The objection is that it is competent for the witness to state what was done and not what was not done. It is perfectly idle to take up the time of the court in asking whether Mr. Davis or Mr. Belden did not do this, that, or the other thing, when the witness has testified what did transpire there. It is a matter of fair argument whether they did thus and so, but I submit that it is not proper for the witness to testify to anything except as to what occurred on that occasion.

The PRESIDING OFFICER. On what ground does counsel ask the question?

Mr. THURSTON. Mr. President, in a matter of this sort when what has taken place has been sworn to upon the other side, I deem it entirely proper as a matter of correct examination to show that certain other things did not take place, and to contradict the statements of both Belden and Davis.

Mr. Manager PALMER. Mr. President, we have not claimed that any such thing took place. It does not contradict anything.

Mr. THURSTON. Then I will withdraw the question on that admission by the managers.

Mr. Manager PALMER. There is no admission at all; we have only proved what took place there, not what did not take place.

Mr. THURSTON. If it is not an admission I will let it go for what it is worth.

The PRESIDING OFFICER. The Presiding Officer understands the question is withdrawn.

Mr. THURSTON. It is withdrawn. [To the witness.] Do you know one Donald McLellan?

A. Yes, sir.

Q. Who was a witness here during this trial?

A. Yes, sir.

Q. I do not see the date of that conversation here. To save time looking it up, I will ask you, Mr. Marsh, do you remember the date at which you had a conversation with Mr. McLellan in your office, and also a conversation had with him in the street the following day, if you will state it?

The PRESIDING OFFICER. It is on page 269 of the record.

Mr. THURSTON. Thanks, Mr. President.

The WITNESS. The date is January 27.

Mr. THURSTON. I withdraw that last question. [To the witness.] Did you have a conversation with Mr. Donald McLellan at your office in the United States court building, city of Pensacola, Fla., on or about the 27th day of January last?

A. I did, sir.

Q. Did he, or did he not, state to you at that time in substance and effect as follows: That on the trial of Davis and Belden for contempt he took down the judge's remarks just as given?

A. He stated that to me; yes, sir.

Q. Did he, or did he not, on that occasion further say that he afterwards took the manuscript to Judge Swayne and he looked it over, but made no correction?

A. He made that statement to me.

Q. Did he, or did he not, further state at that time and place that Judge Swayne then said to him that his statement was about right?

A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that there was no abusive language used by Judge Swayne at the time of the sentence?

A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that Judge Swayne did not use the expression that Mr. Davis and General Belden were a stench in the nostrils of the people, and that he did not state that their conduct was a stench in the nostrils of the people, or words to that effect?

A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that Judge Swayne did not use the expression that Mr. Davis and General Belden were a stench in the nostrils of the people, and that he did not state that their conduct was a stench in the nostrils of the people, or words to that effect?

A. Yes, sir.

Q. Did he, or did he not, then and there state to you that Judge Swayne's conduct at the trial of Davis and Belden for contempt was dignified, and that it was what he thought a judge's conduct should be?

A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there further state to you that at that time Judge Swayne's appearance was that of sadness and not of anger?

A. Yes, sir; he made that statement to me.

Q. Did you have any further conversation with him?

The PRESIDING OFFICER. What the witness McLellan stated was that Judge Swayne was sad, not angry, when sentencing Judge Belden.

Mr. THURSTON. I understand. [To the witness.] I will ask you, Mr. Marsh, did he limit that statement as to the sentence of Judge Belden?

A. No, sir; not to me.

Q. Did you have another conversation with the same gentleman on the street of Pensacola in front of the Parlor Market about that same date or the next day?

A. As I recall, it was the same day that I had the conversation with him in front of the Parlor Market.

Q. I think he said "the same day." At that time and place did he, or did he not, state to you that he had been up to the Escambia Hotel to see Judge Liddon and had been asked about the article; that he expected that he would be summoned to Washington, but did not want to go for fear he would say something he ought not to say?

A. Yes, sir; he made that statement to me.

Q. Are you familiar with the rules of practice of the circuit court of the State of Florida?

A. Yes, sir; I am.

Q. What would be the rule day for the return of process or appearance after praecipe had been served?

A. Under the laws of the State of Florida service of summons must be effected ten days before the return day, which is the first Monday of each month. The praecipe therefore must be filed the previous day. Our practice is to file a praecipe not later than the second Thursday before the first Monday of the

month, and the summons must be served not later than the ensuing Friday.

Mr. THURSTON. Mr. President, I have noticed that in Judge Belden's testimony he speaks of the suit of Watson & Co. against Edgar for commission as having been pending in the United States court of Pensacola. I think he evidently made a slip of the tongue, or else was incorrectly reported. In order to make that certain, however, I will ask this witness. [To the witness.] Was any such case as that brought in the United States circuit court or district court at Pensacola?

A. No, sir; that case—I examined the record myself—was brought in the county judge's court of Escambia County.

Q. In the reincarnated suit of Florida McGuire after November, 1901—for brevity's sake I call it "the Florida McGuire case"—did Mr. E. T. Davis appear as one of the attorneys?

A. Yes, sir.

Q. Was there a præcipe for witnesses filed in that case?

A. Yes, sir.

Q. (Handing paper to witness.) Is that it?

The PRESIDING OFFICER. Was that introduced yesterday? Mr. THURSTON. No, your honor. I did not introduce it. I stated that I would introduce it.

The WITNESS (examining paper). Yes; that is the præcipe.

Mr. THURSTON. I will offer this in evidence, with the permission of the Senate. I will not ask to have it read. There is a copy here that I will furnish for use in printing. [To the witness.] Were you present when that case in which the subpoenas were issued was tried?

A. Yes, sir.

Q. Do you remember the witnesses called for the plaintiff, Florida McGuire?

A. Only in a general way.

Q. About how many were there?

A. I think there were sixteen or seventeen witnesses called.

Q. Were any of them called for the plaintiff who resided outside of Pensacola?

A. I do not think there were. There was no summons issued for a witness residing outside of the city limits.

Q. Have you examined your records to see whether any further præcipes were filed for subpoenas in that case?

A. I have been unable to find any other præcipes for witnesses.

Q. Just one more thing. In the case of Florida McGuire—I have called it that without naming the defendants, in order to be brief—pending in the circuit court at Pensacola on November 5, and which was dismissed on November 11, did Mr. Davis appear formally of record in that case; and, if so, when?

A. On the morning of November 11 Mr. Davis asked that his name be entered of counsel in the cause.

Q. Was it done?

A. It was done.

Q. Did he file any paper?

A. He presented an application for an order of discontinuance. Later, in December, Mr. Davis presented to me a statement in the matter of taxation of costs which made some objections to some items that were in the process of being taxed. This paper was signed by himself and by Simeon Belden and Louis P. Paquet as attorneys.

Mr. THURSTON. Mr. President, I find that I put that paper in evidence on yesterday. I therefore withdraw my offer of it to-day.

The PRESIDING OFFICER. The Presiding Officer recollected that objection was made to it, and he decided the paper bore on the question, though it was not conclusive, and that it was put in evidence.

Mr. THURSTON. Yes, Mr. President, I do not wish to duplicate it. (To the witness.) That is all.

The WITNESS. I have not answered the question yet.

The PRESIDING OFFICER. The witness has not answered the question fully. The Reporter will read the last question and answer.

Mr. THURSTON. The witness had partially answered the question, and I thought he had concluded; but if there is anything further to add I should like to have read what he did say, and then let him complete his answer.

The Reporter read as follows:

Q. Did he file any paper?

A. He presented an application for an order of discontinuance. Later, in December, Mr. Davis presented to me a statement in the matter of taxation of costs which made some objections to some items that were in the process of being taxed. This paper was signed by himself and by Simeon Belden and Louis P. Paquet as attorneys.

The WITNESS. After the taxation of costs, Mr. Davis filed with me an appeal from that taxation signed by himself and Simeon Belden on, I think, January 4. I notified him the mat-

ter would be called up before the court. He accepted this notice and appeared in person and argued the matter before the court.

Mr. THURSTON. That is all.

Mr. PATTERSON. Mr. President, I desire to propound to the witness the questions which I send to the desk.

The PRESIDING OFFICER. The questions of the Senator from Colorado will be read.

The Secretary read the first question of Mr. PATTERSON, as follows:

Q. On the contempt trial was the statute declaring the punishment for contempt read or called to the attention of Judge Swayne?

A. Not that I recall.

The Secretary read the second question of Mr. PATTERSON, as follows:

Q. After the dismissal of the suit of Florida McGuire when was it recommenced?

A. The 13th day of February, 1902, as I recall, or thereabouts.

Mr. PETTUS. I desire to propound to the witness the questions which I send to the desk.

The PRESIDING OFFICER. The Senator from Alabama propounds questions, which will be read by the Secretary.

The Secretary read the first question of Mr. PETTUS, as follows:

Q. By what authority did you allow the original records and papers in the Florida McGuire case to be taken from your office and brought here?

A. I just simply brought them. There is an independent record of all these transactions recorded in books and kept at Pensacola. I brought the files only.

The Secretary read the second question of Mr. PETTUS, as follows:

Q. Did not Mr. Davis read to the judge on the trial of the contempt case the statute of the United States defining contempts of courts?

A. Only in so far as it was recited in the American and English Encyclopædia, out of which he read. The statute itself was not given in full, but only by reference.

The Secretary read the third question of Mr. PETTUS, as follows:

Q. After a civil case is placed on the trial docket, is there any rule or practice as to setting cases for trial on particular days?

A. No settled practice. The usual course is for the parties to agree. This agreement is recognized by the court, providing it would not result in holding the jury an unreasonable length of time, the requirement of the court being that the business be dispatched as rapidly as possible.

Mr. CULBERSON. I desire to propound four questions to the witness in consecutive order, they being numbered.

The PRESIDING OFFICER. The questions will be read by the Secretary.

The Secretary read the first question of Mr. CULBERSON, as follows:

Q. Did Judge Swayne ever, within your knowledge, register or cast a vote in Florida? If so, when and where did he do so?

A. No, sir.

The Secretary read the second question of Mr. CULBERSON, as follows:

Q. Did Judge Swayne ever, within your knowledge, pay a poll tax in Florida? If so, when and where was it paid?

A. I have no knowledge about those matters at all.

The Secretary read the third question of Mr. CULBERSON, as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne prior to 1900 had in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. Prior to October, 1900, Judge Swayne had no house rented or fixed place where he kept furniture that I know of.

The Secretary read the fourth question of Mr. CULBERSON, as follows:

Q. State any fact within your personal knowledge showing or tending to show that Judge Swayne, prior to 1900, exercised any right, performed any duty, or took advantage of the privilege as a resident of Pensacola, Fla., or his district.

A. That is a pretty broad question. I should have to reflect on that a moment. Just read the question again, please.

The Secretary again read the last question propounded by Mr. CULBERSON.

A. Early in my acquaintance with Judge Swayne he often spoke to me of—

Mr. Manager PALMER. If the court please, I object to that answer. That is not an answer to the question.

The WITNESS. That is the only kind of an answer I can give to it—that is, conversations with Judge Swayne.

Mr. CULBERSON. I ask that the question be again read to the witness. It asks for any fact within his knowledge. A

witness yesterday objected that a legal question had been asked. I ask this witness to state any fact within his knowledge, and therefore would request that the question be again propounded.

The WITNESS. I understand the question now, I think.

The PRESIDING OFFICER. The question will be again read.

The Secretary again read the last question propounded by Mr. CULBERSON, as follows:

Q. State any fact within your personal knowledge showing, or tending to show, that Judge Swayne prior to 1900 exercised any right, performed any duty, or took advantage of the privilege as a resident of Pensacola, Fla., or his district.

A. If that question refers to voting and paying taxes, I have no information on the subject at all. The only information I could give would be conversations with Judge Swayne—

Mr. Manager PALMER, Mr. Manager POWERS, and Mr. Manager OLMSTED. Do not give them.

A. And his endeavors to get a house in Pensacola.

Cross-examined by Mr. Manager PALMER:

Q. Mr. Marsh, you say that Davis called the attention of Judge Swayne to the act of 1831?

A. He read some provision out of the encyclopædia. I do not recall the exact citation.

Q. He called his attention to the fact that a contempt could not be punished summarily unless it was committed within the presence of the court or so near thereto as to disturb the administration of justice or in violation of some positive decree, order, or judgment of the court?

A. I do not think that was the character of the citation he gave. It was on some other point.

Q. You say that what he did read he read out of the American and English Encyclopædia?

A. Yes, sir.

Q. Did he have the book there?

A. Yes, sir.

Q. Did Judge Swayne have the act of 1831, providing for the punishment of contempts, before him during the trial of that case?

A. If I recall, the Revised Statutes were not used at all during the trial.

Q. How long was it after the testimony in the case closed before Judge Swayne imposed the sentence on these men?

A. He deliberated only a few moments. Probably two or three minutes.

Q. Did he examine the statutes between the time the testimony was closed and the time he pronounced sentence?

A. I do not recall that he did.

Q. Did Judge Swayne to your knowledge ever examine that statute with reference to this case?

The WITNESS. Afterwards or before?

Q. Before.

A. Not before that I recall.

Q. Did he examine the statute afterwards?

A. I think; yes, sir.

Q. That is to say, after these men went to jail, then he did examine the statute?

A. No; it was after the decision in the circuit court of appeals.

Q. Then it was after the men had been put in jail, was it not?

A. Yes, sir.

Q. Up to the time the men were committed to jail, to your knowledge had Judge Swayne ever examined the statute?

A. No, sir; not in my presence or that I recall.

Q. Were the Revised Statutes in the library of the court?

A. Yes, sir; I had possession of them.

Q. And the judge could have examined them if he had asked for them?

A. I should have certainly afforded them; yes, sir.

Q. Now, you say on Monday, the 5th of November, Judge Swayne made a statement that he had received a letter from Belden and Paquet stating that they had understood that he had negotiated the purchase of a part of the tract of land in dispute in the Florida McGuire case?

A. That, I think, was Tuesday, November 5.

Q. On Tuesday, November 5, was it?

A. Yes, sir.

Q. And Paquet was present in court?

A. Yes, sir.

Q. And Judge Swayne stated that when he ascertained that this land was in controversy before him he broke off the negotiations?

A. He stated that when the quitclaim deed—

Q. You just answer the question that I asked. Did he state

then and there that he broke off the negotiations when he found out that the land was in controversy before him?

A. When he found out it was a quitclaim deed—

Q. Do you know what statement was put on record on the 11th of November?

A. Yes, sir.

Q. Does he say anything about a quitclaim in that statement?

A. In that statement he says that when the quitclaim was sent to him he discovered by inquiry that the property was the same as that in litigation before him.

Q. Did he in his statement on the 5th of November say anything about a quitclaim deed?

A. I think he did, yes, sir; that is my recollection.

Q. Now listen. Was not the reason he gave for breaking off negotiations that he discovered that the land was in litigation before him?

A. Only inferentially. I do not think he stated—

Q. He did not state that proposition?

A. I do not think he stated that proposition squarely, no, sir.

Q. Did he state then and there that Mr. Hooton had told him when he purchased the land that it was a part of the Cheveaux or Rivas tract and was in suit before him?

A. No; he did not refer to that.

Q. He stated then and there that he never found out that the property was in controversy before him until after he received the letter from the agent?

A. No; he did not go to that extent.

Q. Did he state the time when he ascertained that the property was in litigation before him?

A. He said on inquiry in relation to the quitclaim deed he found that the property was in litigation in that suit.

Q. Then he stated practically that he did not find out that the property was in litigation until after the deed was sent to him?

A. I am not testifying as to conclusions.

Q. I call your attention to the American and English Encyclopædia of Law on page 32, and ask you to state whether the portion I will read was what Mr. Davis called to the attention of the court:

United States Statutes, section 724 (U. S. Rev. Stat.) limits the power of the Federal courts to punish for contempts, and defines contempts to be either: (1) contempts committed in the presence of the court; (2) the misbehavior of an officer of the court in his official transactions; or (3) the disobedience or the resistance by any officer, party, juror, or other person, to any lawful writ, process, order, rule, decree, or command of the court.

Was not that what Davis read?

A. I do not recall that he read that portion. I think it was some subsequent citation from that book. I am not certain about that. I would not attempt—

Q. Is there any subsequent citation in this book on the subject of the act of 1831?

A. My recollection is not clear as to what he did read.

Q. If there is not in this book any reference to the act of 1831 except that, it must be the one he read?

A. That would be the conclusion; yes, sir.

Q. Did Judge Swayne state that the reason why he returned the quitclaim deed was because he found that the property was in litigation before him?

A. Well—

Q. You can answer that yes or no.

A. I can not recall exactly the ground on which he placed it. I took down his statement in writing and reduced it to the record—the statement of November 11.

Q. You put on the record on November 11 the statement he made on November 5?

A. No; the statement he made on November 11 I took down—

Q. This is the statement he made on Tuesday, November 5, according to the record that you have certified in this case? Listen:

On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated and now states that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

Q. Is that the memorandum you wrote down?

A. I made that record on November 11—of the statement of Judge Swayne made on November 11.

Q. Then the reason the judge gave for refusing to go on

with the negotiations is because he found the property was in litigation before him?

A. I do not understand that that is stated—

Q. That is what the statement says. I am asking you if that is what was said at that time.

A. That is what I reduced to the record.

Q. How did you come to talk with this man McLellan?

A. I had received a request from Senator Higgins to find out who the reporter was who wrote the article in the Pensacola News of November 12. I had inquired of the business manager—

Q. Then you were interested in getting testimony in this case, because Senator Higgins asked you to?

A. Yes, sir.

Q. That is the reason why you inquired of the reporter?

A. Yes, sir.

Q. You say the reporter told you that Judge Swayne did not state then and there that the conduct of these men was a stench in the nostrils of the community?

A. Yes, sir; I put that question squarely to him.

Q. The reporter was mistaken in that statement, because Judge Swayne did say that, according to your testimony?

A. No; not my testimony. I have not said so in my testimony.

Q. I will ask you now if Judge Swayne did not say that the conduct of these men was a stench in the nostrils of the community?

A. I have no recollection of any such statement.

Q. Did you not just state that on the witness stand here?

A. I have just stated that Judge Swayne said that their conduct had a vicious tendency, and that they had adopted crooked methods. That—

Q. Did you not state—

Mr. THURSTON. Let him answer.

Mr. Manager PALMER. All right.

A. That is my recollection.

Q. (By Mr. Manager PALMER.) Did you not state here within ten minutes that he said that the conduct of these men was a stench in the nostrils of the community?

A. No, sir; I will stand by my testimony on that subject.

Q. How long was it after the contempt proceedings before these lawyers were put into the hands of the marshal and started to jail?

A. About an hour and ten or fifteen minutes.

Q. Then the whole trial, the testimony of the witnesses and the deliverance of the judge, occupied an hour and ten minutes?

A. Yes, sir.

Q. Have you given all the testimony that was given on that occasion, or, substantially all?

A. I think I have given in substance—

Q. You have given the names of the witnesses who were sworn and substantially what they testified to?

A. No; I have not gone into detail.

Q. What officer took these men to prison?

A. The United States marshal.

Q. Was he there in court?

A. Yes, sir.

Q. Did the judge order him to take them to prison?

A. There was no specific order. The sentence was that they stand committed until the terms of the sentence were complied with.

Q. Did the marshal walk up and take them?

A. I do not know.

Q. Did he have a commitment?

A. Not for ten or twenty minutes; probably a half hour afterwards.

Q. The commitment had not been prepared when the marshal took them away?

A. I do not know what he did on that subject. I went out to prepare the commitment.

Q. What did you do with it?

A. Gave it to the marshal.

Q. The men were then in prison?

A. I do not know.

Q. Were they there?

A. They were not in the marshal's office.

Q. They had gone to some place?

A. They had gone.

Q. The marshal was there alone?

A. I do not know that I noticed whether they were in court or not.

Q. Then, beyond any doubt, they were in prison by the time you delivered the commitment?

A. Yes, sir; but I have no knowledge—

Q. The marshal made haste to put them in prison before he received the commitment?

A. I do not know what he did.

Q. Where was Judge Swayne?

A. He went to his office immediately.

Q. As soon as he pronounced sentence he left the place?

A. Within a few moments.

Q. Did he order you to make out the commitment?

A. No, sir.

Q. You did of your own motion?

A. I made it out as a matter of course.

Q. Who issued the subpoenas in this case?

A. I did.

Q. To whom did you give them?

A. To the marshal.

Q. Who ordered you to issue them?

A. Mr. Fisher filed the præcipe for the witnesses.

Q. Who is Mr. Fisher?

A. An attorney at law at Pensacola.

Q. And one of the defendants in the Florida McGuire case?

A. One of the attorneys appointed by the court.

Q. To do what?

A. For the purpose of investigating this charge made by Mr. W. A. Blount.

Q. When did the court appoint attorneys to investigate this charge?

A. On Monday morning.

Q. Did you have any conversation with Judge Swayne on this subject?

A. None whatever.

Q. Did he have any conversation with Blount or Fisher on Monday morning?

A. Not in my presence.

Q. Or to your knowledge?

A. No, sir.

Q. Was anybody else appointed to investigate this case and present it to the court than Blount and Fisher?

A. That is all.

Q. And they were both defendants in the case?

A. Yes, sir.

Q. Now, in the Paquet case, did not Paquet come there and have a trial before Judge Swayne and bring a lawyer from New Orleans to defend him?

A. Judge Paquet came over to file an answer.

Q. I am not asking you about that. Listen to my question and answer it. Did not Judge Paquet come to Pensacola and bring a lawyer from New Orleans and have a trial before Judge Swayne?

A. I do not recall that he had anything, except possibly an argument on his answer, and not a trial.

Q. Did he make the argument himself, or did his counsel whom he brought from New Orleans make it?

A. I do not recall. I think possibly Mr. Wilkins came over with him.

Q. Did not Mr. Boatner come?

A. Possibly it was Mr. Boatner.

Q. Why is not your recollection as vivid on that subject as it is as to the details of the contempt proceedings?

A. I have recalled it substantially.

Q. After it was determined that Paquet had to go to jail, he apologized to keep out of jail?

A. It was not determined before. A point was raised as to the jurisdiction of the court in the nature of an exception.

Q. Did Judge Swayne decide that against him?

A. There is no record of any decision.

Q. I am not asking whether there is any record.

A. No; it was not determined.

Q. Did he intimate his decision?

A. On the argument? I think not.

Q. At any other time?

A. No, sir.

Q. If the Judge was going to decide in favor of Mr. Paquet, there would have been no occasion for making the apology?

A. I do know that he filed a petition for a writ of prohibition.

Q. On the contempt trial, the first thing was to sentence the men to be disbarred for two years?

A. That was included in the sentence.

Q. Whether it was the first or the middle or the last, it was somewhere along the line?

A. Yes, sir.

Q. Why did he take that back?

A. Mr. Blount spoke to him.

Q. What did he say?

A. I did not hear it.

Q. Did Mr. Blount walk up to the desk and speak to Judge Swayne?

A. Yes, sir.

Q. And immediately Judge Swayne took it off.
 A. Yes, sir.
 Q. And you do not know what was said?
 A. I did not hear the conversation. It was in a whisper.
 Q. It was in whispers?
 A. Yes, sir.
 Q. Did Judge Swayne at that time examine the act of 1831 to see whether Mr. Blount was right or whether he was right?
 A. I do not think he did; no, sir.
 Q. Did Barker tell you from whom he got that article?
 A. Barker testified in the trial that Mr. George W. Pryor delivered it to him.
 Q. That is, at the printing office?
 A. Yes, sir.
 Q. How did you come to be so observant of Mr. Davis during the week that preceded the contempt proceedings?
 A. I do not know how I came to. I know that I recall the circumstances very distinctly. That is all I can say.
 Q. Can you give the same account of the actions and conversations of every other lawyer who came into court during that week?
 A. I think I can recall in a general way circumstances of that kind at any period. I may and I may not be able to—
 Q. Have you any reason to suppose that Mr. Davis was counsel in the Florida McGuire case other than those you have given here?
 A. I accepted it as a matter of course, and that is the reason I made my proposition to him about the witnesses.
 Q. You say you saw him conversing with Paquet, and therefore you concluded that he must be of counsel.
 A. He came in with them and left with them, and that was the only affair or only business he had in court. He had no other case—
 Q. That is the only reason you had for concluding that he was of counsel in that case?
 A. Yes, sir.
 Q. He was not counsel of record?
 A. No, sir.
 Q. Until Monday—
 A. No, sir.
 Q. When he came in and asked to have his name put of record and asked to have the case discontinued?
 A. I will say that is a very usual proceeding.
 Q. I am not asking you whether it is a usual proceeding. Please answer my question. Who appointed you to your office?
 Mr. SCOTT. Mr. President, I should like it if the manager would give the witness time to answer the question. Before he can answer a question, counsel propounds another.
 Mr. GALLINGER. Mr. President, I was about to rise to a point of order, that the witness ought to be allowed the privilege of answering questions in full. He has been interrupted time and again by the honorable manager.
 Mr. Manager PALMER. If I may be permitted, I only interrupt the witness when he is giving an unresponsive answer.
 Mr. GALLINGER. Not always.
 Mr. SCOTT. Give him time to answer.
 Q. (By Mr. Manager PALMER.) I ask you who appointed you to your office?
 A. Judge Pardee.
 Q. When?
 A. May 28, 1895.
 Q. Have you any interest in the result of this case?
 A. Well, friendly interest; yes, sir.
 Q. Have you any interest in the event?
 A. Only in a friendly way, so far as I understand—
 Q. If Judge Swayne should be removed do you expect to lose your office?
 A. I have no such expectation.
 Q. Have you taken a lively interest in the preparation of this case?
 A. Yes, sir. I will amend an answer that I made. I started to make the answer. I was appointed by Judge Pardee on May 28, 1895, clerk of the circuit court. I was appointed June 12 following by Judge Swayne clerk of the district court.
 Q. Then you are an appointee of Judge Swayne?
 A. So far as the district clerkship is concerned.
 Q. Have you consulted with Judge Swayne from time to time about the preparation of this case?
 A. Yes, sir.
 Q. And you have been instrumental in securing witnesses and have assisted in the preparation of the case?
 A. Yes, sir.
 Q. State whether or not this office you hold under Judge Swayne's appointment, that of clerk of the district court, is at his pleasure.

A. Yes, sir; at the pleasure of the district judge.
 Q. Was Judge Swayne on the bench at the time the marshal took these men away to prison?
 A. I do not recall whether Judge Swayne was on the bench when he took them away. I did not see the taking away of Mr. Davis and Belden. I went immediately to my room and fixed up the warrant of sentence.
 Mr. Manager PALMER. That is all.
 Mr. THURSTON. That is all.
 Mr. MORGAN. I have some questions I desire to have propounded to the witness.
 The PRESIDING OFFICER. The Senator from Alabama propounds questions to the witness. They will be read by the Secretary.
 The Secretary read as follows:
 Q. When Mr. Paquet presented his apology to Judge Swayne had the prohibition proceeding and the proceedings on the writ of habeas corpus been decided?
 A. Yes, sir.
 The Secretary read as follows:
 Q. Had Davis paid the fine and had Belden suffered the imprisonment imposed upon them before Paquet made his apology?
 A. Yes, sir.
 The Secretary read as follows:
 Q. At the time Paquet made his apology did he have any causes or business in the court over which Judge Swayne was presiding?
 A. I think not. I think at that time he had withdrawn from the Florida McGuire case. That was in March, and as I recall now, when the second suit was brought Judge Paquet's name was not of counsel, and that was the only case he had before the court at that time or since.
 Mr. BACON. I wish to propound a question.
 The PRESIDING OFFICER. The Secretary will read the question.
 The Secretary read as follows:
 Q. Did Judge Swayne pronounce sentence orally, or did he read it from a written paper?
 A. He pronounced sentence orally, without reference to any paper, so far as I remember.
 The PRESIDING OFFICER. Who is the next witness?
 Mr. THURSTON. Call Beverly Burton.
 Beverly H. Burton sworn and examined.
 Mr. HIGGINS. Possibly the Secretary had better repeat the answers of the witness; he seems to have a cold.
 The reading clerk repeated the answers of the witness.
 By Mr. THURSTON:
 Question. What official position did you hold, if any, on the 9th day of November, 1901?
 Answer. I was deputy clerk of the circuit court.
 Q. Of what county?
 A. Escambia County, Fla.
 Q. At any time on that day or evening did you receive a precept for the issuance of a writ in a case of ejectment brought by Florida McGuire against Charles Swayne?
 A. Yes, sir.
 Q. What attorney's name, if any, was signed to it?
 A. Simeon Belden, E. T. Davis, and Paquet, I think.
 Q. Who brought it to you?
 A. It was brought by Joseph Keyser.
 Q. Where were you at the time?
 A. At my home.
 Q. Your residence?
 A. Yes, sir.
 Q. Not at your office?
 A. No, sir.
 Q. At what time in the evening?
 A. It was about 8.20.
 Q. When it was presented to you, what did Keyser say?
 A. He asked me to go down to the office and issue it and then get the sheriff to serve it immediately.
 Q. Was that all he said?
 A. Yes, sir; I think so.
 Mr. THURSTON. That is all.
 Mr. Manager PALMER. We have no questions.
 The PRESIDING OFFICER. The next witness.
 Elijah B. Barker, sworn and examined.
 By Mr. THURSTON:
 Question. Where do you reside?
 Answer. I now reside in Uniontown, Ala.
 Q. Where did you reside in November, 1901?
 A. Pensacola, Fla.

Q. What was your business then?

A. I was city editor of the Daily Press.

Q. On the evening of November 9, 1901, did anyone bring this manuscript article to you [handing witness manuscript]?

A. (After examining.) Yes, sir.

Q. Where were you at the time?

A. I had just started to leave my office, and I met Mr. Pryor—George W. Pryor—at the door. He told me that Mr. Paquet had sent this to me for publication—Paquet, of New Orleans. He was then in Pensacola. I read it and saw it was a good piece of news, and I told him I would publish it if he would promise not to give it to the other papers.

Mr. Manager PALMER. I do not think a conversation between this man and Mr. Pryor is of any consequence, and I object to it.

The PRESIDING OFFICER. Is it claimed by the counsel?

Mr. THURSTON. I do not need to claim that, because I can reach it in another way. [To the witness.] Were you a witness in court at the trial for contempt of Belden and Davis?

A. Yes, sir.

Q. Were you sworn as a witness there?

A. Yes, sir.

Q. Will you detail what statement you made as a witness there concerning this same transaction?

A. Well, I was asked did I write this article. I had then a copy of the paper with me also, and I carried this into court. I told him I did not. Then he asked me where I got it. I told him George W. Pryor brought it to me between 10 and 11 o'clock on Saturday night, the 9th—I think this was on Monday I was being examined—and that Mr. Pryor told me that Mr. Paquet had written it and sent it to the paper. I told Mr. Pryor that I would publish it and would not charge anything for it if he would give me the scoop—not to carry it to the other papers. He promised that he would.

Mr. THURSTON (producing paper). Mr. President, I exhibit the paper identified and testified to by the witness in order to show that it is the same paper already in evidence.

The WITNESS. I wrote the headlines to it myself.

Mr. THURSTON. I think the witness discloses the fact that he was an enterprising newspaper man. That is all, Mr. Barker.

The PRESIDING OFFICER. Do the managers on the part of the House desire to cross-examine the witness?

Mr. Manager PALMER. No, sir.

Thomas F. McGourin sworn and examined.

By Mr. THURSTON:

Question. Where do you reside?

Answer. Pensacola, Fla.

Q. In November, 1901, did you hold any office? If so, what?

A. Yes, sir; I was United States marshal in and for the northern district of Florida.

Q. Were you present at the proceedings in contempt against Davis and Belden on November 12 of that year?

A. I was present during the concluding part of that trial, which covered only the period in which the judge passed sentence on the defendants.

Q. Did you hear the statement of the judge in proceeding to render judgment and in sentencing the defendants?

A. I did.

Q. Will you please state it, according to your best recollection?

A. I can state it in substance and effect only.

Q. Yes. Please do so.

A. The Judge began his remarks by a reference to the rule and answer and testimony as showing to the court that these attorneys in bringing the case would bring it for the purpose of impeding and influencing the action of the court in this case; that their purpose was to discredit the court in the eyes of the people. The Judge spoke of the nobility of the profession of the law, and how well the ethics of that profession had been maintained by members of the bar. He also spoke of the age of one of the defendants and the great regret he felt in having to pronounce sentence upon him. That is the gist of the remarks, as I remember.

Q. In your recollection was there any expression used to the effect that the action of the defendants was a stench in the nostrils of the community?

A. No, sir; I remember no such remark.

Q. You heard all that was said?

A. I did; all that the Judge said.

Q. Yes; all that the judge said. What was the general appearance of Judge Swayne in the delivery of these remarks?

A. As I recall it, I thought the judge spoke with a little more

than ordinary deliberation and calmness and firmness, and the impression that was created on my mind was that—

Mr. PALMER. Mr. President, I object to the impression created on the witness's mind. What he is entitled to testify to are facts that occurred there at that time.

Mr. THURSTON. Mr. President, they asked their own witnesses questions of that kind and they were permitted to answer.

Mr. Manager PALMER. Did you object?

Mr. THURSTON. No, sir; I did not object, because if I had objected to all the improper questions asked we would have been here until next summer.

Mr. Manager PALMER. No; I think not.

The PRESIDING OFFICER. The Presiding Officer was not paying strict attention to the answer of the witness.

Mr. THURSTON. There is no objection made to my question, but they object now to what the witness was beginning to say. I should like to have the Reporter read it.

The PRESIDING OFFICER. The last question and the answer will be read by the Reporter.

The Reporter read as follows:

Q. What was the general appearance of Judge Swayne in the delivery of these remarks?

A. As I recall it, I thought the judge spoke with a little more than ordinary deliberation and calmness and firmness, and the impression that was created on my mind was that—

The PRESIDING OFFICER. Let the last phrase be stricken out. The witness can not testify to the impression made on his mind.

Q. (By Mr. THURSTON.) What was the appearance of the Judge, as to his speaking in anger or not?

A. He exhibited no anger whatever that I could observe. He appeared as sad rather than angry—sadness.

Q. Did you see Mr. Belden at that time?

A. Yes, sir.

Q. What was his general appearance as far as you noticed as to health?

A. Well, he seemed to be suffering from some facial trouble—paralysis, I believe.

Q. Aside from that, was there any appearance of any special trouble or ill health?

A. None whatever, that I know of.

Q. (Producing paper.) I show you that list of witnesses with the residence opposite their names, and I will ask you how long it would have taken you to have served subpoenas on all those witnesses if you had been requested to do so?

A. (Examining paper.) There are, let me see, how many?

Mr. THURSTON. Twelve, I believe.

The WITNESS. The most of them were within easy reach of the court-house. I would say two hours. I believe they could all have been reached within two hours' time.

Q. (By Mr. THURSTON.) If subpoenas for them had been placed in your hands on Saturday evening, November 9, 1901, could you have served them all that evening?

A. Yes, sir; unless they were out of the city, or something of that kind.

Q. Was any subpoena placed in your hands or any request made upon you in the matter of summoning witnesses for the plaintiff, Florida McGuire, on the trial then pending in your court at any time on the afternoon or evening of Saturday, November 9, 1901?

A. I think not. I am speaking from memory. It is reasonably certain there was not.

Mr. THURSTON. That is all, Mr. President.

Cross-examined by Mr. Manager POWERS:

Q. Mr. McGourin, are you the marshal of the district court of the northern district of Florida at the present time?

A. I am.

Q. And you were in 1900 and 1901?

A. I was.

Q. Did anyone request you to be in court at the time that Belden and Davis were sentenced?

A. Did anyone request me to be in court?

Q. Yes.

A. No, sir.

Q. And you came in, as I understand, when the trial was in progress?

A. Yes, sir.

Q. And that trial lasted about one hour?

A. I do not know how long.

Q. Well, how far had it advanced when you came into court?

A. It had advanced to the period just before Judge Swayne began to pronounce sentence.

Q. Then I understand that you heard the entire sentence of Judge Swayne?

A. Yes, sir.
 Q. And how long did that occupy?
 A. Very few moments; I do not know. Do you want me to approximate the time?
 Q. Well, about how many minutes?
 A. Oh, I would say from five to ten minutes.
 Q. Now, did Judge Swayne, in pronouncing that sentence, state under what statute he rendered it?
 A. Well, I could not state as to that.
 Q. Did he refer to any statute under which the respondents were guilty?
 A. Well, I could not answer that, either.
 Q. Did he state for what offense he sentenced Belden and Davis?
 A. My recollection is, for contempt.
 Q. Well, what was the form of contempt? What had they done that made them liable to be committed for contempt?
 A. Something along their professional lines that had occurred some time prior.
 Q. I know; but I understood you to say that you heard the entire sentence?
 A. I did.
 Q. Did not the judge in that sentence state what he was sentencing them for?
 A. He may have. I also stated, sir, that I did not remember the judge's language. I remember the substance and effect of it only.
 Q. Can you not tell this court for what offense, as Judge Swayne expressed it, he sentenced these men?
 A. That was for contempt of court.
 Q. And what had they done that constituted contempt?
 A. Well, I could not answer that only in a general way. Then it would be upon general knowledge, not from any personal.
 Q. Did you take these men to prison?
 A. I took one of them.
 Q. Which one?
 A. Mr. Belden.
 Q. Who took Davis?
 A. One of my deputies.
 Q. How soon after the sentence was completed was it that you had them in jail?
 A. Well, I do not know as to that either.
 Q. How many minutes?
 A. I do not know.
 Q. Did you have any commitment when you went to jail?
 A. I presume I had, for I would hardly take a man to jail without authority to do so.
 Q. Well, did you detain them until the commitment was completed?
 A. I think it is a safe proposition to say that I did; but at the same time I could not state now, definitely. The matter has passed out of my recollection almost completely.
 Q. What occasion was there, Mr. Marshal, why these men should be hurried off to jail?
 A. They were not hurried off to jail.
 Q. How many minutes was it between the sentence and the time these men reached the jail?
 A. I do not know.
 Q. Now, I understood you to say that Judge Swayne's manner was deliberate, but was not angry?
 A. That is what I said.
 Q. Did you hear him use the expression that these men were ignorant?
 A. I think not.
 Q. Did you hear him use the expression that they were guilty of crooked transactions?
 A. I do not know that I did.
 Q. You did not, I understand, hear him use the expression that their conduct was a stench in the nostrils of the people?
 A. I did not; at least, I do not remember it, and I think I would have remembered it if I had.
 Q. Then you heard nothing in that sentence that led you to assume that the language which was used by the judge was in any way in criticism of those respondents?
 A. Well, I do not quite understand your question, sir.
 Q. I understand you to say that Judge Swayne was not angry; that he was deliberate; that when he referred to Belden he spoke with great sadness; that he did not use the expression that the counsel were ignorant or crooked or that their conduct was a stench in the nostrils of the people?
 A. I said I did not remember of his using those words, save the last ones with reference to their being a stench in the nostrils of the people.
 Q. Do you remember that?

A. I do not.
 Q. You heard the entire sentence?
 A. I did.
 Q. And you have stated to the best of your recollection just what took place at that trial and that commitment?
 A. At that sentence—not the trial, the sentence.
 Q. Well, at the sentence?
 A. Yes, sir.
 Mr. Manager POWERS. I think that is all.
 Mr. THURSTON. That is all.

Herman Wolf sworn and examined.

By Mr. THURSTON:

Question. Where do you live?

Answer. In Pensacola, Fla.

Q. Did you hold any official position in November, 1901?

A. I did.

Q. What?

A. I was chief deputy in the United States marshal's office.

Q. Were you present in the court room at any time during the hearing of the contempt proceedings against Belden and Davis?

A. I was there when the sentence was pronounced.

Q. Did you hear what Judge Swayne said in pronouncing that sentence?

A. I did.

Q. State as nearly as you can remember and in substance and effect what he said.

A. I could not give any correct idea at this time of just what he did say. I could not say.

Mr. TELLER. Mr. President, there is too much noise in the Chamber. The witness does not speak very loud, and we can not hear over here at all.

The PRESIDING OFFICER. The Senate will please be in order.

Q. (By Mr. THURSTON.) Did he use any such expression as that the action of the attorneys defendant was a stench in the nostrils of the people, or words to that effect?

A. I do not recall any such language. I do not think it was used.

Q. What was the general appearance and manner of Judge Swayne in the delivery of that sentence?

A. Very dignified, deliberate, and calm.

Q. What, if any, evidences were there in his manner or appearance or delivery of the sentence indicating anger on his part?

A. Not that I could observe.

Q. What, if any, exhibition of feeling did he appear to give?

A. He appeared to be kind; perfectly calm.

Mr. THURSTON. That is all.

Cross-examined by Mr. Manager POWERS:

Q. A single question. Did I understand that you are at the present time a deputy marshal?

A. I am.

Q. And under Marshal McGourin?

A. I am.

Q. And you were present in the court with Marshal McGourin at the time of the sentence of Davis and Belden?

A. I was.

Q. Did you enter the court room with Marshal McGourin?

A. I did not.

Q. How happened you to be in the court room that morning?

A. I go in, as a general thing, when sentence is passed of any kind, because it is a part of my duty to be there to know what has to be done with those parties that sentence is passed upon.

Q. Did you hear the trial of Belden and Davis?

A. I heard part of it only.

Q. You heard the entire sentence of Judge Swayne?

A. I did.

Q. Did I understand you to say that he spoke with great kindness and used no harsh language?

A. I did not say "great kindness." I said with kindness; but he did not use any harsh language.

Q. That is, he spoke with kindness and used no harsh language?

A. I did say that.

Q. Now, did you hear the Judge in the course of the sentence make any reference to the defendants or respondents being ignorant men?

A. I did not.

Q. Or being men who were guilty of crooked conduct?

A. I do not recall language of that kind. There might have been something of that kind used, but not in that way.

Q. Or being men whose conduct was a stench in the nostrils of the people?

A. If such language was used I do not remember it. I am positive that I did not hear it.

Q. Did you hear any language used by the court which reflected upon the conduct of the respondents?

A. I did not.

Q. In other words, the Judge sent these men to prison without any criticism of their conduct? Is that so?

A. I did not say that.

Q. You say you heard no language that reflected upon their conduct?

A. There is a difference between criticism and reflection.

Q. Then, as I understand, you have left it that Judge Swayne, in his sentence of Belden and Davis, said nothing which reflected upon their conduct?

A. That is the way I understood it.

Q. They went to prison all the same?

A. They did.

Q. You took one, did you?

A. I did not.

Q. Who did take them to prison?

A. The field deputy.

Q. How soon after the sentence was it that they were on their way to prison?

A. Almost immediately thereafter.

Q. And did you see Judge Swayne in the court-house when they were taken out?

A. After the prisoners were turned over to the field deputy I went to the side door and went into my office, and I do not know that Judge Swayne left the court room at that moment or not.

Q. Who made out the commitment?

A. Clerk Marsh.

Q. And was the commitment made out before the hearing, the trial, or after the trial?

A. I am not aware of that. It does not come into my hands until it is necessary for it to be served.

Q. Did that commitment come into your hands?

A. The commitment did come into my hands.

Q. How soon after the sentence did it reach your hands?

A. I could not say; it is a small circumstance that escaped my memory entirely. I do not know just when.

Q. Well, how many minutes?

A. I could not say.

Q. Would you say it was more than five minutes before the commitment reached your hands after the sentence?

A. How?

Q. Was it more than five minutes after the sentence before the commitment reached you?

A. I would not express any opinion on that matter, because I do not recall it at all.

Q. You would not say, then, that it was more than five minutes?

A. I would not say anything about it, because I could not make a definite statement of it.

Mr. Manager POWERS. That is all.

Reexamined by Mr. THURSTON:

Q. Mr. Wolf, a question on one other subject. Did you have a conversation with Donald McLellan on Tuesday or Wednesday, February 7 or 8 of the present month, in the United States marshal's office at Pensacola?

A. I did, on Wednesday, the 8th.

Q. Who else was present, if anyone, at that conversation?

A. R. P. Wharton, deputy marshal.

Q. Did, or did not, Mr. McLellan say to you at that time, in substance and effect, that when he took his account as a reporter for the newspaper of the contempt proceedings he was looking the greater part of the time at his notes and the defendant, Mr. Davis, and that he was not certain whether Judge Swayne said that Davis and Belden were a stench in the nostrils of the people or that their conduct was such?

A. He used such language as that in substance.

Mr. THURSTON. That is all.

The PRESIDING OFFICER. Call the next witness.

Mr. THURSTON. Call Percy S. Hayes.

Percy S. Hayes, sworn.

Mr. THURSTON. With the permission of the Senate, I will excuse this witness for a few moments. I do not seem to have at hand a paper that I wish to identify by him. I will call him a little later. Call Mr. Greenhut in place of this witness.

Adolph Greenhut, sworn and examined.

By Mr. THURSTON:

Question. Where do you live?

Answer. Pensacola, Fla.

Q. Are you the Greenhut who was a witness in the contempt proceeding against Mr. O'Neal in Judge Swayne's court?

A. I am, sir.

Q. And you are the party therein named who brought the complaint against Mr. O'Neal.

A. I am, sir.

Q. Will you please state to the Senate and show, so far as you can, the nature of the injuries that were inflicted upon you in that encounter with Mr. O'Neal?

Mr. Manager POWERS. Mr. President, I must object to that line of examination. There is before the court already a certified transcript of the court records, together with a certified transcript of all the testimony in that trial, including the full testimony of the present witness, so that all the testimony that was before the respondent at the time he sentenced O'Neal for contempt is in the record at the present time, and nothing else was offered, except the testimony of Mr. Blount, whom I called to ask him what authority—that is, what statutes and what decisions, were brought to the attention of the court at the time he argued his demurrer to the complaint of Mr. Greenhut. Now, it strikes me that there is no occasion to travel outside of that record. More than that, the question of the extent of the injuries growing out of the altercation between O'Neal and Greenhut was thoroughly gone into, not only by the witnesses to that affray, but also by the doctors in attendance; and it does not seem to me that it is competent at this time, in view of that phase of the case, to introduce the character of testimony which the learned counsel is inquiring into.

Mr. THURSTON. Mr. President, I agree fully with the general proposition laid down by the distinguished manager, but I have no purpose to go into the transaction that was testified to in the court. I only am seeking now, because it is better evidence than can be secured in any other way, from a mere reading of the record, to show the exact character of the injuries this man received and the serious extent of the same.

Mr. Manager POWERS. I desire to say, in reply to that, that we do not in any way undertake to mitigate the serious injuries which grew out of the altercation. Our contest will be, when we come to argue that evidence, that it was a case in which the court had no jurisdiction, and that the respondent assumed jurisdiction without having jurisdiction. There is no question but that it was a serious altercation, and there is no question but that this witness was seriously injured in it.

Mr. THURSTON. Mr. President, on that statement by the manager I will discharge the witness.

Ezra P. Axtell sworn and examined.

By Mr. THURSTON:

Question. Where do you reside?

Answer. Jacksonville, Fla.

Q. What is your profession?

A. I am a lawyer.

Q. How long have you been practicing law?

A. Since 1885.

Q. What professional relation did you hold toward the receivership of the Jacksonville, Tampa and Key West Railroad in 1893, and subsequently thereto?

A. I was his general attorney during the whole time that he was receiver of that property.

Q. Do you remember about what time it was that the limits of the northern judicial district of Florida were changed by act of Congress?

A. It was in the summer of 1894, in July, I believe.

Q. Jacksonville before that was in that district, was it?

A. It was in the northern district of Florida; yes, sir.

Q. And that part of the State including Jacksonville was taken away from the district?

A. Yes, sir.

Q. And attached to the southern district?

A. Yes, sir.

Q. Now, your receivership was begun before the district was changed, was it?

A. Yes, sir; in April, 1893.

Q. And did it continue down after the time of the change in the district?

A. Yes, sir; until some time in the year 1900—the receivership was discharged.

Q. After the change in the district was the jurisdiction or supervision of the receivership changed from the northern district of Florida, or Judge Swayne's district, to the southern district of Florida?

A. Yes, sir. All the property of the company was then in the southern district of Florida.

Q. What court, then, was it that passed upon the receiver's final accounts?

A. The circuit court of the southern district of Florida.

Q. How were the accounts of the receiver passed upon by the court—from time to time or at the end of the receivership?

A. In the year 1895 the judges of the circuit court of the fifth judicial circuit, including Justice White, of the Supreme Court of the United States, promulgated an order that receivers of property appointed by the Federal courts in that circuit should file their reports in the clerk's office quarterly, and, unless exceptions were taken to those reports within thirty days, they stood confirmed as of course.

Q. When was that order made?

A. That was made in the summer of 1895.

Q. Well, now, prior to that time, for the year 1893, how were the accounts passed upon—from time to time, or did they stand over for final review and approval?

A. Prior to that time masters in chancery were appointed to pass upon the accounts of the receivers as they were filed before the master. This order of which I speak did away with all standing masters, and these masters, prior to that time, passed upon the accounts of the receiver and his vouchers as they were filed with the master, and no order of the court was made until the final disposition of the case.

Q. Prior to the change in the district did Judge Swayne ever have before him for approval or disapproval, and did he ever approve or disapprove, any of the accounts of the receivership up to the time of the change of the district?

A. None, excepting in some particular instances where special permission was obtained of the court to do certain things and make certain improvements upon the property as to which the receiver deemed it necessary that he should obtain permission of the court before making any contract for.

Q. Then, as I understand you, the general accounts of that receivership up to the time of the change of the district were passed upon and approved by the judge of the southern district of Florida after the change in boundaries?

A. Yes, sir; in this way: Upon the promulgation of the order to which I referred the receiver was required to file up to that date his accounts, which he did; and no objection or exception being taken to them, they stood confirmed as a matter of course, without any special action of even the judge of the southern district of Florida.

Mr. THURSTON. That is all, I believe.

Cross-examined by Mr. Manager POWERS:

Q. Mr. Axtell, I think you acted as counsel for Judge Swayne in the hearing before the subcommittee of Congress when evidence was taken in Florida?

A. I did one day; yes, sir.

Q. Now, with reference to the expense of this private car, I understand that that expense was not passed upon by Judge Swayne in any approval of the receivers' accounts. Is that correct?

A. That is correct, sir.

Q. Can you state whether or not the expenses of that car from Guyencourt, Del., to Jacksonville, together with the expenses of running that car to California and return, ever appeared as such in any receiver's account?

A. I can not, sir.

Q. And can you tell the court whether or not the judge who passed upon the accounts, which included the expenses of operating that private car, had any knowledge that it had been used for the purpose for which it had been used?

A. I think I explained that no judge passed upon those accounts, because no exceptions were ever filed to them.

Q. And, so far as you know, no party in interest—that is, no creditor or no stockholder—had any knowledge of the expenses of operating the car in the way in which it has been testified it was operated?

A. I know that the attorneys of the parties in interest knew that the car made those trips.

Q. Did they ever advise their clients of that knowledge?

A. I have not the slightest idea, sir.

Q. Well, now, as I understand, these accounts were filed and open for inspection for a given length of time?

A. Yes, sir.

Q. And after a certain length of time, nobody objecting, the accounts were approved?

A. Yes, sir.

Q. Can you tell the court whether or not the receiver, in making up those accounts, placed in a separate item of expense the use of this private car by Judge Swayne?

A. I can not, sir.

Q. Well, do you not know, as a matter of fact, that that expense was not disclosed in any of the receiver's reports?

A. I do not, sir. I assume that all the expenses of the receivership were disclosed in those reports.

Q. Did you have anything to do with making up those accounts?

A. I had to examine them, after they were made up, in a general way.

Q. Now, did you ever see a separate item for the expense of that private car as used by this respondent?

A. I did not, sir.

Q. And are you not satisfied that it did not appear?

A. Indeed, I do not know whether it did or not.

Q. Where are those accounts at the present time?

A. Those that are in existence are on file in the clerk's office of the circuit court at Jacksonville.

Q. Well, are they not all in existence at the present time?

A. So far as I know.

Mr. Manager POWERS. That is all.

Mr. THURSTON. That is all. Call Percy Hayes.

Percy S. Hayes recalled.

By Mr. THURSTON:

Question. Where do you live?

Answer. Pensacola, Fla.

Q. What is your business?

A. Newspaper reporter.

Q. What was your business in November, 1901?

A. Newspaper reporter.

Q. Were you present in court at the time of the contempt proceedings on the 11th day of November, 1901, against Belden and Davis?

A. Yes, sir.

Q. In what capacity were you there?

A. In the same capacity—newspaper reporter.

Q. Did you give careful attention, so as to secure a correct newspaper statement?

A. I did, sir.

Q. Did you do so, sir?

A. I did.

Q. Did you publish an account of that transaction there the next morning?

A. I did, sir.

Q. In what paper?

A. The Pensacola Journal.

Q. (Handing paper to witness.) I will ask you if this is a copy of it?

A. Shall I read this entire article?

Q. No. I just ask you if that is a true copy of that article as prepared by you and furnished your paper and published in it?

A. Without reading the entire article, I think it is.

Q. Well, now, will you read it through and tell me as to whether or not that is a fair report and statement of what took place at the trial?

A. All right, I will read it through.

Mr. Manager POWERS. Mr. President, if the purpose of having the witness read that article is to introduce it in evidence we certainly must object. If I understand the rule of evidence correctly, the witness may look over the article and use it for the purpose of refreshing his recollection with a view to testifying, independent of the article, except so far as it refreshes his recollection of what took place at that trial; but I did not suppose that he could read over the article, and then that the article could be put in evidence as a fair account of what took place.

The PRESIDING OFFICER. The managers make no objection to the article being put in evidence, as the Presiding Officer understands.

Mr. Manager POWERS. We certainly do make objection to the article being put in evidence. We do not object to the witness using the article to refresh his recollection for the purpose of testifying as to what took place.

The PRESIDING OFFICER. An article in another newspaper was put in evidence by the managers.

Mr. Manager POWERS. Yes; but that was upon entirely a different ground, I imagine. It was put in evidence because there was testimony that the article had been approved by the respondent, had been submitted to Judge Swayne, and by him revised and published, so that it came in the nature of an admission from the respondent. I do not understand that the circumstances surrounding this article are of that character at all.

Mr. THURSTON. Mr. President, I would suggest that if the honorable managers would wait until we made some offer before making objections they might not lose so much time in the trial. We have not offered anything yet.

The PRESIDING OFFICER. The Presiding Officer understands that the objection was to the witness reading the article in order to testify.

Mr. Manager POWERS. No.

Mr. THURSTON. No.

The PRESIDING OFFICER. The Presiding Officer understood that the objection was to the reading of the article, and then having it introduced in evidence.

Mr. Manager POWERS. We made no objection to the witness, Mr. President, reading the article. We understood the offer on the part of the learned counsel was to have him read the article and then to produce the article in evidence. I feel quite confident that that was his proposal at the time he asked the question.

Mr. THURSTON. I ask that the Reporter read the question. The Reporter read as follows:

Q. Well, now, will you read it through and tell me as to whether or not that is a fair report and statement of what took place at the trial?

Mr. THURSTON. It will be very clearly seen that I have made no offer of this paper. There was nothing to object to, and all this time has been thrown away because of their anxiety to anticipate what I might do.

The PRESIDING OFFICER. What is now the question?

Mr. THURSTON. I will ask another question.

Mr. Manager POWERS. The witness has not answered the previous question.

Mr. THURSTON. No; he has not answered that question.

Mr. Manager CLAYTON. We object to it.

Mr. THURSTON. I withdraw that question to save time. (To the witness.) Have you now read this article?

A. Yes, sir; I have.

Q. After reading it, is your recollection refreshed as to what took place at that trial?

A. Yes, sir; to a certain extent.

Q. Where were you sitting in the court at the time Judge Swayne delivered his opinion?

A. To the best of my recollection, I was leaning against the desk of the clerk—Clerk Marsh. I was not sitting anywhere.

Q. Will you please state, as nearly as you can, in substance what the judge said at that time?

A. The judge, in passing sentence, if that is what you refer to—

Mr. THURSTON. That is what I refer to.

A. The judge, in passing sentence, stated it was one of the most painful duties he had been called upon to perform during his incumbency of the bench; that owing to the age of one of the prisoners or the defendants he regretted it very much; that the conduct, though, of the attorneys was a disgrace to the community. What else he said I do not remember.

Q. (By Mr. THURSTON.) What was his appearance and manner in the delivery of that sentence?

A. That of a judge presiding upon the bench.

Q. Did he exhibit any evidences of anger?

A. I did not notice it, sir, if he did.

Mr. THURSTON. I think that is all.

The PRESIDING OFFICER (to the managers on the part of the House). Inquire.

Mr. Manager PALMER. We have no questions.

Mr. THURSTON. I now offer a certified copy of the opinion rendered by Judge Pardee, circuit judge of the fifth circuit, in the matter of the writ of habeas corpus ex parte Davis and Belden. I will not ask to have it read, but will ask that it may go into the RECORD.

Mr. Manager PALMER. All right.

The PRESIDING OFFICER. It will be printed in the RECORD without reading, unless there is a request that it be read on the part of the managers or of some Senator.

The opinion referred to is as follows:

United States circuit court, fifth judicial circuit. Proceedings before Don A. Pardee, circuit judge, in chambers. Ex parte Ezra T. Davis. Writ of habeas corpus.

The petition, setting forth the commitment and detention of the relator, charges that his detention is illegal on the following grounds:

"1. That the commitment under which your petitioner is held is illegal and void.

"2. That the court was without jurisdiction or power to sentence your petitioner in the premises.

"3. That the motion upon which the proceedings were had was not sworn to or verified.

"4. That the said motion does not charge petitioner with contempt either directly or by implication.

"5. Because by the said motion it appears that petitioner only did that which he was authorized to do as an attorney at law in behalf of his clients.

"6. Because there is no allegation that the acts done by him as alleged in said motion were done wrongfully or with improper motives.

"7. Because the commitment is irregular in that it is not directed to the keeper of the county jail of Escambia County, but only to the United States marshal for the northern district of Florida.

"8. Because the said commitment does not set forth such acts of petitioner as in law amount to contempt of court.

"9. Because it appears therefrom that the said court has punished as a contempt an act of petitioner, which in law is not contempt.

"10. Because the facts set forth in said commitment do not constitute a contempt of court.

"11. Because the acts of petitioner set forth and related in said commitment were legal and proper.

"12. Because it is not alleged in said commitment that the acts of petitioner were contrary to right.

"13. Because it does affirmatively appear that the acts set forth in said commitment, and that by the said court were held to be contempt, were done and performed by petitioner in the proper and just discharge of his duty as an attorney at law.

"14. Because it is not alleged in said motion or commitment that the action of petitioner tended in its operation to degrade or make impotent the authority of the court.

"15. Because it is not alleged in said motion or commitment that the action of petitioner tended in any manner to impede or embarrass the due administration of justice.

"16. Because there is no allegation in said motion or commitment that petitioner intentionally committed the said alleged contempt.

"17. Because from the motion filed it is apparent that no contempt was intended."

The writ having issued, the keeper of the prison makes return that he holds the relator by virtue of the following commitment:

United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the eleventh day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Ezra T. Davis for causing and procuring, as attorneys of the circuit court of Escambia County, Florida, a summons in ejectment, wherein Florida McGuire was plaintiff and the Honorable Charles Swayne was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveau tract, in the city of Pensacola, Florida, a tract of land involving a controversy in ejectment then depending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire v. The Pensacola City Company and others had been submitted to the court on November 5th, 1901, and denied, and after the said judge had said in open court, and in the presence of the said judge, that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of Florida McGuire v. Pensacola City Company and others for a week or more and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

Which charges were in violation of the dignity and good order of the said court and a contempt thereof.

And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses, on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Ezra T. Davis.

And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Ezra T. Davis to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of \$100, and that he stand committed until the term of said sentence be complied with or until he be discharged by due course of law.

The said jail being the place duly selected for the imprisonment of persons convicted of offences against the laws of the United States in the courts thereof in said northern district of Florida.

Now, therefore, you, the said marshal, are hereby commanded forthwith to convey to the said jail at Pensacola, in the State of Florida, the body of the said Ezra T. Davis, and deliver him to the keeper thereof.

And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Ezra T. Davis, the person aforesaid, into your custody, and him, the said Ezra T. Davis, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of ten days from the 12th day of November, 1901, and until the said fine of one hundred dollars be paid, or until he be discharged by due course of law.

Herein fall not at your peril; and make due return of what you shall do in the premises and of this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

F. W. MARSH, Clerk.

This case was submitted on the record and argued by Mr. A. J. Murphy for relator and W. A. Blount, contra.

PARDEE, circuit judge.

Section 725 of the Revised Statutes of the United States reads as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discre-

tion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer, he was and is charged with conduct in and out of court, which, if accompanied with malicious intent, or had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court. To hear and decide whether the relator was guilty of such contempt, and if found guilty to punish him for such conduct, was clearly within the jurisdiction of the court, and the court having exercised such jurisdiction and found the relator guilty of contempt, its finding against the relator can not be reviewed on habeas corpus. (In re Swan, 150 U. S., 637.)

In *United States v. Pridgeon* (153 U. S., 48, 62), the court says: "Under a writ of habeas corpus the inquiry is addressed not to errors, but to the question whether the proceedings and the judgment rendered therein are, for any reason, nullities, and unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge."

The court having adjudged the relator in contempt, proceeded to sentence him to imprisonment in the county jail for a period of ten days and to pay a fine of \$100.

It is conceded that this sentence is beyond the jurisdiction of the court, which, under section 725 above quoted, is limited to power to imprison or to fine, but not both. But the question is whether the relator can complain of this sentence until he has performed that part which the court had power to impose. The court had power to impose a sentence of imprisonment in the county jail for ten days; also had power to impose a fine of \$100. Is the relator injured until he has either suffered the imprisonment or paid the fine?

This question has been somewhat considered in the Supreme Court. In *Ex parte Swan* (supra) the court says:

"It is further contended that the court exceeded its power in that the payment of costs was required, because the costs were in the nature of a fine, and therefore the punishment inflicted was both fine and imprisonment. Under section 970 of the Revised Statutes, when judgment is rendered against a defendant in a prosecution for any fine or forfeiture, he shall be subject to the payment of costs, and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution; and as contempt of court is a specific criminal offense, it is said that the judgment for payment of costs would appear to be within the power of the court, although by section 725 it is provided that contempts of the authority of courts of the United States may be punished 'by fine or imprisonment, at the discretion of the court.' But be that as it may, the sentence here was that the petitioner be imprisoned 'until he returns to the custody of the receiver the barrel taken by him from the warehouse without warrant of law. And when that has been surrendered, that he suffer a further imprisonment thereafter in said county jail for three months and until he pay the costs of these proceedings.' As the prisoner has neither restored the goods nor suffered the imprisonment for three months, even if it was not within the power of the court to require payment of costs and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose." (Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S. 18.)

In *Ex parte Pridgeon* the court says: "It may often occur that the sentence imposed may be valid in part and void in part, but the void portion of the judgment or sentence should not necessarily, or generally, vitiate the valid portion. (Rev. Stat., sec. 761.) 'The court, or justice, or judge shall proceed in a summary way to determine the facts of the case (in habeas corpus) by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.' There is no law or justice in giving to a prisoner relief under habeas corpus that is equivalent to an acquittal, when, upon writ of error, he could only have secured relief from that portion of the sentence which was void. In the present case the five years' term of imprisonment to which Pridgeon was sentenced can not properly be held void because of the additional imposition of 'hard labor' during his confinement."

"Thus, in re Swan (150 U. S., 553, 637), it is stated that, even if it was not within the power of the court to require payment of costs, and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose."

Considering these authorities and that this writ is sued out and is returned before one of the judges of the circuit court for the northern district of Florida, it would seem to be proper to discharge this writ, leaving the relator to elect whether he will pay the fine or suffer the imprisonment, and then to seek relief from the balance of the sentence. Another course to follow would be to adjudge the sentence imposed to be beyond the law and remand the relator to the circuit court of the northern district of Florida to be sentenced within the law for the contempt of which he has been adjudged guilty.

The case shows that the relator has suffered some portion of the sentence of imprisonment for this reason, and under all the circumstances of the case I deem it best, and the relator can not complain, to hold that when the relator shall have satisfied either the imprisonment or fine adjudged against him he will be entitled to his discharge."

For these reasons the writ of habeas corpus herein sued out is discharged.

Circuit Judges McCormick and Shelby heard the argument in this case and concur in this opinion.

DON A. PARDEE, Circuit Judge.

United States fifth judicial circuit. Proceedings before Don A. Pardee, circuit judge, in chambers, New Orleans, La. Ex parte Elsa T. Davis, ex parte Simeon Beiden. On writs of habeas corpus.

Writs of habeas corpus in favor of the above-named relators having issued on the order of the undersigned circuit judge, returnable in chambers in the city of New Orleans, and returns having been made to the said writs, and the issue presented having been argued—

It is now, for the reasons herewith filed, ordered and adjudged that the said writs be discharged, and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida, at Pensacola.

And the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned upon their appearance and to obey orders issued.

It is ordered that they surrender themselves to said jailer, or said marshal, on or before noon of Monday, the 9th day of December, 1901.

The costs of these proceedings to be paid by said relators.

December 7, 1901.

DON A. PARDEE, Circuit Judge.

UNITED STATES OF AMERICA, Northern District of Florida.

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

MR. THURSTON. I also offer the opinion of Judge Pardee in the case of O'Neal, and will ask that it may go into the record without being read.

THE PRESIDING OFFICER. If there is no objection, it will be printed in the RECORD without being read.

The opinion referred to is as follows:

United States circuit court, fifth judicial circuit, northern district of Florida. Ex parte W. C. O'Neal. Habeas corpus.

The petitioner, W. C. O'Neal, was convicted in the district court for the northern district of Florida on a charge of contempt of court in committing an assault upon an officer of said court, and thereupon was sentenced to imprisonment in the county jail at Pensacola, Fla., for the term of sixty days. This conviction was immediately followed by a writ of error to the Supreme Court of the United States, based on a certified question as to jurisdiction. In dismissing the writ of error the Supreme Court said:

"Jurisdiction over the person and jurisdiction over the subject-matter of contempts were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out."

"In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal or error, or in such appropriate way as may be provided." (Louisville Trust Company v. Colinger, 184 U. S., 18, 26; ex parte Gordon, 104 U. S., 515.)

"And while proceedings in contempt may be said to be sui generis, the present judgment is in effect a judgment in a criminal case, over which this court has no jurisdiction on error." (Section 5, act of March 3, 1891, 26 Stat. L. 826, ch. 517, as amended by the act of January 20, 1897, 29 Stat. L. 492, ch. 68; Chetwood's Case, 165 U. S., 443, 462; Tinsley v. Anderson, 171 U. S., 101, 105; Cary Manufacturing Company v. Acme Flexible Clasp Company, 187 U. S., 427, 428; 190 U. S., 37, 38.)

The case is here presented upon the record proper as submitted to the Supreme Court and upon a further showing of alleged facts, which petitioner claims do not contradict the record, to wit:

"That the place at which took place on the morning of October 20th, 1902, the affray between A. Greenhut and petitioner, in which is alleged to have occurred the assault by petitioner upon the said A. Greenhut for which the district court has sentenced petitioner as for a contempt, was the office in the store of the said A. Greenhut, and was a part of the building occupied by him as a wholesale grocery store, and that his office was used by him for the purpose of conducting the said grocery business, and was used in connection with his position as trustee only because it was his place of business, and therefore more convenient for him. That the said building was at said time, and is now, No. 104 East Government street, in the city of Pensacola, and distant from the United States court room and the building in which it was held not less than four hundred feet, and separated therefrom by an intervening street and an intervening alley, and by more than a block of brick business houses, and was not in any way connected with, or used in connection with, the said court or court-house or any of the functions or duties of the said court or of the judge thereof. That the said district court was not in session in the city of Pensacola on the said 20th day of October, nor had been for months before the said date, and that no session thereof occurred thereafter until November 7th, 1902, and that the judge of said court was not on the date in said State, nor had been therein for months prior thereto, nor did he come therein until the 6th day of November, A. D. 1902."

As to claimed authority to supplement record as to facts, see In re Cuddy (131 U. S., 280).

In my opinion, the additional facts offered to supplement the record do not materially change the status of the case nor do they in any wise extend the jurisdiction of this court upon this writ.

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether at the time of the resistance the court was actually in session, with a judge present in the district, and whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit: A trustee in bankruptcy for and on account of and in resistance to the performance of the duties of such trustee had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was?

Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court

was fully authorized to hear and decide and adjudge upon the merits. (In re Savin, 131 U. S., 267, 276, 277.)

This brings us squarely to the question whether, upon this writ of habeas corpus, the inquiry can be extended by this court so as to review, as upon writ of error, any irregularities of the district court in the proceedings or to determine as upon appeal the real merits of the case.

I have examined with care the decisions of the Supreme Court of the United States in *In re Cuddy* (131 U. S., 280); *Ex parte Mayfield* (141 U. S., 116), and in *In re Sachs & Watts* (190 U. S., 1), and in many other cases, and do not find that either or any of them control or determine the question in favor of such claimed jurisdiction.

Whatever an appellate court may have power to do in regard to supplementing the record, as held in *In re Cuddy* and *In re Mayfield*, or upon certiorari and habeas corpus to examine the merits of the case, as in *In re Sachs & Watts*, I am forced to follow, as I did in *Ex parte Davis* (112 Fed. Rep., 139), the Supreme Court in *United States v. Pidgeon* (153 U. S., 48, 62), wherein it is declared:

"Under a writ of habeas corpus the inquiry is addressed, not to errors, but to the question whether the proceedings and the judgment rendered therein are for any reason nullities, and, unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge."

This court has no appellate jurisdiction over the district court for this district, and if it should attempt to go beyond the rule declared in *United States v. Pidgeon* and assume authority to look into the merits wherein judgments have been rendered in the district court in contempt cases it would be, from my standpoint, an unwarranted assumption of jurisdiction, decidedly tending to scandal in judicial proceedings.

In dealing with the proceedings against petitioner in the district court, the Supreme Court said that an erroneous conclusion in regard to the merits can only be reviewed on appeal or error or in such appropriate way as may be provided. As shown above, the writ of habeas corpus is not an appropriate way provided.

The Supreme Court further said that the judgment in this present case is in effect a judgment in a criminal case which that court had no jurisdiction on error. The court did not say that no other appellate court had jurisdiction on error.

In *In re Paquet* (114 Fed. Rep., 437) the circuit court of appeals in this circuit held that that court had no jurisdiction to issue a writ of prohibition in a certain contempt case then pending in the circuit court of the northern district of Florida, but intimated that possibly a writ of error might lie in such cases where final judgment of conviction had been rendered; but whether the petitioner here has or had a remedy by writ of error from or by appeal to any appellate court is immaterial on this inquiry, and I am satisfied that this court has no jurisdiction to review the petitioner's case by any remedy provided by law.

The writ of habeas corpus is discharged.

Circuit Judges McCormick and Shelby sat with me and heard argument in this case, and they concur in this opinion.

DON. A. FARBER, Circuit Judge.

NOVEMBER 10, 1903.

(Indorsed: Law No. 80. *Ex parte W. C. O'Neal*. Habeas corpus. Opinion and order discharging writ. Filed by order of court as of November 10th, 1903. F. W. Marsh, clerk.)

UNITED STATES OF AMERICA, Northern District of Florida:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.] F. W. MARSH, Clerk.

Mr. THURSTON. I offer the complete record under certificate in the case of *Florida McGuire v. Charles Swayne* in the circuit court of Escambia County, Fla., and suggest that it may be printed in the Record without being read.

The PRESIDING OFFICER. Is there objection on the part of the managers?

Mr. Manager PALMER. No, sir.

The PRESIDING OFFICER. If there is no objection on the part of Senators it will be printed in the Record without being read.

The record referred to is as follows:

Summons in ejectment. The State of Florida, Escambia County, ss. Circuit court.

To the sheriff of said county, greeting:

We command you that you summon Charles Swayne to be and appear before the honorable judge of our circuit court for the county of Escambia at a court to be holden in the court-house in Pensacola on the first Monday, being rule day, and the 2d day of December next, to answer the complaint of *Florida McGuire* in an action of ejectment. Damages claimed, \$1,000.00. This you shall in no wise craft, under penalty of the law; and have you then and there this writ, with your proceedings indorsed thereon.

Witness, A. M. McMillan, clerk of our said court, at the court-house aforesaid, this 9th day of November, A. D. 1901.

A. M. McMILLAN,

Clerk Circuit Court.

By B. H. BURTON, D. C.

[OFFICIAL SEAL.] (Endorsement:) In circuit court, Escambia County, Fla. *Florida McGuire v. Charles Swayne*. Summons in ejectment. Filed Nov. 11, 1901. A. M. McMillan, clerk circuit court. Simeon Belden, Louis P. Paquet, E. T. Davis, attorneys for plaintiff.

Came to hand this 9th day of November, A. D. 1901, and executed this 9th day of November, A. D. 1901, by delivering a copy hereof to the within-named Charles Swayne, defendant.

GEO. E. SMITH, Sheriff.
DAN MURPHY, Deputy Sheriff.

Description of the property sued for is as follows: Block No. 91, in the Gabriel Rivers tract, in section 8, township 2 south, range 29 west, in the city of Pensacola, Escambia County, Fla., according to map of said city by Thos. C. Watson, copyrighted in 1884.

Plaintiff's claim of defendant, \$—— mesne profits.

In Escambia County circuit court, State of Florida. *Florida McGuire v. Charles Swayne*.

Please enter my appearance for the defendant in the above-stated case.

JNO. C. AVERY,
Attorney for Defendant.

(Endorsed:) Filed Dec. 2, 1901. A. M. McMillan, clerk circuit court. In Escambia County circuit court, State of Florida. *Florida McGuire v. Charles Swayne*.

And now comes the said defendant and says: That he never was in possession of the said property, or any part thereof; never had any interest therein, or claimed any title thereto, and prays to be hence dismissed with costs.

JNO. C. AVERY,
Attorney for Defendant.

Charles Swayne, being duly sworn, says that the allegations of the foregoing disclaimer are true.

CHAS. SWAYNE.

Sworn to and subscribed before me this 2d day of January, A. D. 1902.

[NOTARIAL SEAL.]

E. R. BURGOWNE, Notary Public.

(Indorsed:) Filed January 6, 1902. A. M. McMillan, clerk circuit court.

STATE OF FLORIDA, County of Escambia:

I, A. M. McMillan, clerk circuit court in and for said State and county, do hereby certify that the foregoing pages contain a true and correct copy of the original summons and service thereof, appearance and disclaimer in said case, as remains of record in the public records of said county in my office.

In testimony whereof I have hereunto set my hand and affixed my seal official this 22d day of December, A. D. 1904.

[SEAL.]

A. M. McMILLAN,
Clerk Circuit Court.

STATE OF FLORIDA, County of Escambia:

I, A. M. McMillan, clerk circuit court in and for said State and county, do hereby certify that praecipe in case of *Florida McGuire v. Chas. Swayne* was filed on the 9th day of November, A. D. 1901, as shown by entry on progress docket in said case, but that said paper is not now on file in the public records of said county in my office.

In testimony whereof I have hereunto set my hand and affixed my seal official this 22d day of December, A. D. 1904.

[SEAL.]

A. M. McMILLAN,
Clerk Circuit Court.

STATE OF FLORIDA, County of Escambia, ss:

I, Charles B. Parkhill, judge of the circuit court of the State of Florida in and for the first judicial circuit, and as judge of the circuit court of Escambia County, in said State, do hereby certify that the attestation of A. M. McMillan, clerk of the circuit court in and for the said State and county, to the transcript of record in proceedings to which this certificate is attached, is in due form.

In witness whereof I have hereunto set my hand at the city of Pensacola, in the said State and county, this 9th day of February, A. D. 1905.

CHARLES B. PARKHILL,
Judge Circuit Court First Judicial Circuit and in and for Escambia County, State of Florida.

Mr. THURSTON. I now offer so much of the record in the *Florida McGuire* case as contains the declaration in which is set forth a description of the property involved in that suit.

The PRESIDING OFFICER. Is it necessary to read it?

Mr. THURSTON. No.

Mr. Manager PALMER. Allow me to see that, please? [After examining.] That is all right.

Mr. THURSTON. It may go in without being read.

The extract referred to is as follows:

The said defendants are in possession of a certain tract or parcel of land, situate, lying, and being in the county of Escambia, State of Florida, known and described as follows:

A certain parcel of land known as the "Gabriel Rivas" tract, containing about 262½ acres, more or less, in the eastern portion of the city of Pensacola, Escambia County, State of Florida, mostly in section 8 south, range 29 west, forming a lot of 300 superficial arpents, according to a figurative plan of the survey from the mouth of the rivulet, as the extreme east of this population according to the plan thereof, and is bound northerly and westerly by vacant lands. Southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most westerly limit being north of the compass with a declination of 7° 50' to the northeast, as shown by the original Spanish grant to Gabriel Rivas, the 10th day of November, 1806, and registered in book 7, folio 16, No. 1793, said property being as aforesaid situate in the county of Escambia, State of Florida, to which said plaintiffs claim title, and the defendants have received the profits of the said lands since, etc.

Mr. THURSTON. I also offer a certified copy of the petition to the United States circuit court for the northern district of Florida, of *Florida McGuire* and *Matilda Caro*, plaintiffs in the case that was rebrought after the dismissal of the *Florida McGuire* case, asking the judge to recuse himself on the trial. It is duly certified.

Mr. Manager PALMER. What is the purpose of that, Mr. President? I do not know that I object to it, but I would just like to know what it is.

Mr. THURSTON. It is to show certain statements contained in it as to what Mr. Belden and Mr. Davis say that Judge Swayne had said on the previous trial in passing upon the question of recusing himself.

Mr. Manager PALMER. I shall not object to that if they will put in evidence all that pertains to that particular matter. If they will put in the petition and the ruling of the judge and

the statement he made on the record and the affidavit of Mr. Hooton—all that pertains to that matter—I shall not object. Otherwise I do object.

Mr. THURSTON. I have here only this part which I offer now. We are not required to put in the whole record.

Mr. Manager PALMER. This is not the whole record, and they can not put in a piece of the record.

Mr. HIGGINS. The managers can offer what they see fit of the record.

The PRESIDING OFFICER. Precisely what is the paper counsel offer?

Mr. THURSTON. It is a petition signed by Belden and Davis in the second Florida McGuire case asking Judge Swayne to recuse himself.

The PRESIDING OFFICER. The case that was brought after the contempt proceedings?

Mr. THURSTON. Yes, Mr. President, a subsequent statement of Belden and Davis which was identified on the examination of one of them. It gives a statement of their understanding of what Judge Swayne had said at the former trial or at the term of the court concerning this matter which is inconsistent with the testimony they have given on the witness stand.

The PRESIDING OFFICER. If it is offered for the purpose of contradicting the witnesses, the Presiding Officer thinks it may be admissible. Otherwise he can not see for what purpose it would be admissible.

Mr. THURSTON. That is the purpose.

Mr. Manager PALMER. I should like to have the particular portion pointed out that the learned counsel contend contradicts the statements of the witness.

Mr. THURSTON. I can do that if it is the desire of the Senate that I should read the petition and make an argument as to what part contradicts their statement.

Mr. Manager PALMER. I do not ask that, but I want to know what contradicts the witness, so that we will know what the purpose is.

Mr. THURSTON. I simply state that in the opinion of counsel we think there are inconsistent statements in it which we may desire to use on argument.

Mr. Manager PALMER. I think we are entitled to have pointed out the inconsistent statement which he claims is in the paper, and if there is an inconsistent statement there, I suppose, according to the opinion of the Presiding Officer, it would be evidence to contradict; but if there is no such statement, I do not think it would be admissible.

Mr. THURSTON. If there are not any inconsistent statements, it can not do the gentleman any harm.

Mr. Manager PALMER. Or you any good.

The PRESIDING OFFICER. The Presiding Officer thinks the paper may be admitted, but if, upon examination, it turns out that there are no statements in the paper inconsistent with the testimony which the witnesses have given here, it can be stricken from the record.

The petition referred to is as follows:

United States circuit court, fifth judicial circuit of Florida. Florida McGuire and Matilda Caro v. William Blount et als.

To the Hon. CHARLES SWAYNE,
Judge of the United States Circuit Court, Fifth
Judicial Circuit for the Northern District of Florida:

The petition of Mrs. (widow) Florida McGuire and Matilda Caro, plaintiffs in above-entitled and numbered suit, respectfully represents that the honorable judge of this court should recuse himself in this cause for the following grounds and reasons:

That in February, 1901, your petitioner, Mrs. Florida McGuire, filed in this court a suit for the same property at issue in this cause against the Pensacola City Company et als., asserting the same rights of ownership as herein; that pending said suit Mrs. Lydia C. Swayne, wife of the honorable judge of this court, made a contract to buy and did buy a portion of the property at issue in that and this cause from Charles H. Edgar through T. C. Watson & Co., of Pensacola, agents; that your honor on the 12th of November, 1901, stated from the bench in open court that your wife, Mrs. Lydia C. Swayne, with her own money had negotiated or agreed to buy said property, but that when you saw said deed was a quitclaim deed and comprised a portion of the Rivas tract property in litigation before you, you returned said deed to the said vendor.

That it does not appear that the said Mrs. Lydia C. Swayne ever consented to the return of said deed, and the said vendor, Charles H. Edgar, has still the right to sue said lady to accept said deed and title, and the said Mrs. Lydia C. Swayne having a present or potential interest in aforesaid property, and being so nearly and closely related to the honorable judge of this court, said interest or potential interest we respectfully submit requires your honor to recuse yourself herein. That your petitioners desire to take the testimony of witnesses, in order that any ruling of the court either for or against this formal application should be made of record in this cause. Wherefore petitioners pray that they be allowed to file this petition that you recuse yourself in this cause, and call in another Federal judge to try this cause according to law, all of which is respectfully submitted.

SIMEON BELDEN,
E. T. DAVIS,
JAMES WILKINSON,
Attorneys for Petitioner.

Order.

Let this petition be filed in this cause.

MARCH, 17, 1902.

CHAS. SWAYNE, Judge.

(Indorsed: United States circuit court, fifth judicial circuit of Florida. Florida McGuire and Matilda Caro v. William Blount et al. Filed March 17, 1902. F. W. Marsh, clerk. Petition for recusal of Hon. Charles Swayne, judge.)

UNITED STATES OF AMERICA, Northern District of Florida:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper of document filed in the cause therein specified in said court, on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 1st day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Milton Jackson, affirmed and examined.

By Mr. HIGGINS:

Question. Where do you reside?

Answer. Philadelphia.

Q. Pennsylvania?

A. Yes, sir.

Q. What is your occupation?

A. Manufacturer.

Q. Of what?

A. Hardware.

Q. Are you connected or have you any family connection with the respondent, Charles Swayne?

A. I am his brother-in-law.

Q. Did you marry his sister?

A. I married his sister and he married a cousin of mine.

Q. So it is a double connection. What year were you married?

A. In 1867.

Q. Do you know in what year the respondent was married?

A. In the same year.

Q. You are familiar, then, with the residence of his father and mother in what is now called Guyencourt, near Wilmington, Del.?

A. I am.

Q. Will you state who is the present owner of that property?

A. His mother, Anne P. Swayne.

Q. She has a life interest in it, I believe?

A. She has.

Q. State what is her age?

A. She is in her eighty-seventh year, I think.

Q. Are you familiar with the occupation of that property; do you know who has abided there—who has lived there?

A. I am.

Q. I will ask you if your residence in Philadelphia since 1885 has been continuous or been broken?

A. It has been continuous.

Q. You have been there all the time?

A. With the exception of occasional travel.

Q. Yes. Your residence has been Philadelphia?

A. My residence has been Philadelphia.

Q. Will you please state whether or not Charles Swayne has abided at this place of his parents in Guyencourt?

Mr. Manager PERKINS. That we must object to. We do not object to the witness being asked what the respondent has done, how much he has been there, but to ask whether he abides there is a legal question.

Q. (By Mr. HIGGINS.) Will you state the answer to the question as now put by the learned manager in your own way?

Mr. Manager PERKINS. That is a good question.

A. Judge Swayne visited Guyencourt usually in the summer time, since he has been residing in Florida.

Q. Since he has been residing there? What year did that residence in Florida begin?

Mr. Manager PERKINS. I object to that. The witness can not state about that.

Mr. HIGGINS. You object to the answer?

Mr. Manager PERKINS. I object to the answer.

Mr. HIGGINS. My question is what time he moved to Florida—went to Florida to live.

The WITNESS. Twenty years ago.

Mr. HIGGINS. I mean when he first went?

Mr. Manager PERKINS. I do not object to the question, if it is as to when he first went to Florida.

Mr. HIGGINS. I thought my question was very plain—when he went to Florida to live?

A. 1885.

Q. (By Mr. HIGGINS.) Where from?

A. Philadelphia.

Q. That was in 1885?

A. Yes, sir.

Q. Has he at any time since then been—in the language of the learned manager—in Guyencourt, and for how much of the year?

A. He has usually been there in the summer time.
 Q. At any other time than the summer time?
 A. Yes.
 Q. What?
 A. In the winter time. He was there upon the occasion of the illness of his father, which resulted in his decease, in 1889. He was there during the winter.
 Q. He was there during the winter at the time of his father's illness and decease in 1889. At any other time in the winter?
 A. I think he made occasional visits.
 Q. To whom?
 A. To his mother.
 Q. Does Mrs. Anne Swayne at this time reside or live in Guyencourt?
 A. She does.
 Q. During what time of the year?
 A. In the summer, spring, and a portion of the autumn.
 Q. Where does she spend the rest of the year?
 A. At present she is at my residence. During the latter years she has been unable to go South to spend the winters with her son.
 Q. During the latter years?
 A. Yes, sir.
 Q. You say that during that time she has been abiding with you in your household in Philadelphia?
 A. She stays with me in the winter.
 Q. During the time she has been staying with you has the house at Guyencourt been open? Has Judge Swayne been there?
 A. No; the house was closed.
 Q. Except the visit that the judge made during the illness and death of his father, and other visits that he might have made while his mother was there, has he been at that place during the winter since he went to Florida to live?
 A. Not that I know of.
 Q. Has there been, or not, a close family intimacy between your wife and yourself on the one part and Judge Swayne and his family on the other?
 A. There has been.
 Q. In which you are aware of the movements of each other?
 A. They are intimate.
 Q. How is the property at Guyencourt occupied? Is it in the hands of a tenant or not?
 A. There is a tenant occupying the greater portion of the land, with a tenement.
 Q. Occupying a tenant house? The mansion house belongs to the family?
 A. The mansion house is not occupied by the tenant.
 Q. But that you say has been continuously closed in the winter since Mrs. Swayne came to live with you?
 A. I think there was one exception, in which the Judge's son occupied it one winter.
 Q. What is the Judge's son's name?
 A. Henry G.
 Q. Do you know what winter that was?
 A. No; I can not locate it exactly by date.
 Q. Is there any other way in which you can fix it?
 A. I think it was shortly after he was married and had a spell of yellow fever and was there recuperating.
 Q. Did he have that spell of yellow fever in Cuba?
 A. In Habana.
 Q. After the war?
 A. Yes, sir.
 Q. Or during the American occupation?
 A. Yes.
 Q. Do you recall the time when the act of Congress was passed curtailing the district of Judge Swayne?
 A. I do.
 Q. Did you have any conversation with the Judge at that time about the effect of that legislation upon his residence and where he proposed to live after that?
 Mr. Manager PERKINS. I do not object to that question, but of course it should be answered "yes" or "no." The witness should be instructed not to go beyond that.
 A. Not at the time.
 Q. (By Mr. HIGGINS.) At what time did you have such a conversation with him?
 A. I think it was during the subsequent summer.
 Q. How do you fix it?
 A. I fix it by a paper that he showed me.
 Q. What was the paper?
 A. It was an invitation to reside in Tallahassee.
 Q. From whom?
 A. From eminent citizens there. I am not acquainted with them personally.

Q. Did you read the paper?
 A. I did. It was handsomely engrossed—
 Mr. Manager PERKINS. I object to the contents of the paper. The counsel, I suppose, does not want that.
 Mr. HIGGINS. The witness said it was handsomely engrossed. That does not relate to its contents. That relates to its appearance.
 Mr. Manager PERKINS. There is no use wasting time on that.
 Mr. HIGGINS. I think this is very pertinent.
 Mr. Manager PERKINS. What is the question?
 Q. (By Mr. HIGGINS.) I ask whether or not at the time you read that paper?
 A. I did.
 Q. And it was an invitation to the judge to reside at Tallahassee?
 Mr. Manager PERKINS. I object to the contents of the paper being stated. In the first place, if they are going to prove the contents of the paper, they should produce the paper. In the second place, how can it bear upon the question of Judge Swayne's residence at Pensacola that somebody at sometime asked him to reside somewhere else. It certainly can not be any evidence of residence.
 The PRESIDING OFFICER. The Presiding Officer understands that the object of these preliminary questions is to lay the foundation for a conversation between the witness and Judge Swayne, in which Judge Swayne made some statements as to his intention with respect to his residence.
 Mr. HIGGINS. That is it exactly.
 Mr. Manager PERKINS. But it is not necessary to give the contents of the paper in order to call his attention to the time of the conversation. What they want is not to call his attention to it, but to give the contents of the paper.
 Mr. HIGGINS. I do not ask for the contents of the paper. I only want to know what the paper referred to.
 Mr. Manager PERKINS. You have got that.
 Mr. HIGGINS. All right. Then I can go on.
 The PRESIDING OFFICER. The Presiding Officer thinks the counsel have gone as far in that connection as is proper.
 Q. (By Mr. HIGGINS.) What did the Judge state at that time about the subject of his residence?
 Mr. Manager PERKINS. To that I object, Mr. President. The statements of Judge Swayne, which we offered to prove, were excluded, of course, for a different reason, but certainly there is no rule of law which allows the statements of the respondent to be put in evidence in his own behalf. That, of course, is fundamental. No man can prove what he has done or what he has not done by his own statements as to what he did or purposed to do. There is no more fundamental rule of evidence than that the respondent's statements can not be proved in his favor. If that were so, all Judge Swayne would have to do would be to state that he resided in Florida, and that would make him a resident of Florida, or be evidence of his residence there.
 Mr. HIGGINS. I submit to the Senate that this question is eminently proper as a verbal fact, an act of the judge, ante litem motam, before this matter was mooted, years before, in the announcement to his nearest of kin as to his residence at that time. In order to make clear to the Senate the question upon which it is asked to pass, I will say that the authorities of Leon County, Fla., in which is the city of Tallahassee, gave an invitation to Judge Swayne, written and engrossed, to make his residence and home there, and that this was shown to this witness, and that the Judge gave then reasons why he could not accept that offer, because of where he had elected to live. If that is not fair testimony and within the rule, I do not know what is. It was long before this question was ever raised, not with any view of the possibility of any such proceeding as this. The statement is admissible for a double reason; that he was not going to accept that offer; that the offer was made very shortly after the act of Congress was passed, and therefore the question arose at that time; and in rejecting that invitation he did it because he had elected to reside, as the witness will state, elsewhere in his district and with reference to the requirements of that act.
 Now, we have made that statement in answer as a substantive part of the defense, that he announced at that time his intention as to where he expected to live as a proper thing for him to do, and it is an act which I submit it is eminently proper for us to be able to prove.
 Mr. Manager PERKINS. In other words, Mr. President, the offer of the counsel is this when we analyze it: The question being whether Judge Swayne as a matter of fact became a resident of the northern district of Florida, they can prove

that by showing by another witness that Judge Swayne said he intended to become a resident. You can prove a fact. You can prove what a man did; what he was bound to do; that he became a resident. How—by showing what he did? No; but by proving that he said to some one else he intended to become a resident.

The PRESIDING OFFICER. The Presiding Officer will submit this question to the Senate.

Mr. Manager OLMSTED. May I be permitted to cite a precedent before it is put to the Senate?

I find that in the trial of Andrew Johnson, page 207 of the proceedings, as reported in the Globe, it was offered for the counsel by the respondent to prove in these words:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of Mr. Thomas to perform the duties ad interim; that thereupon Mr. Perrin said: "Supposing Mr. Stanton should oppose the order?" The President replied: "There is no danger of that, for General Thomas is already in the office," etc.

Mr. Manager Butler having objected, Mr. Manager Wilson said: "Mr. President, as this objection is outside of any former ruling of the Senate and is perfectly within the rule laid down in Hardy's case"—the celebrated English impeachment case—and he cited this ruling from that case, which may be found in 24 State Trials, page 1096:

Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent should make a part of that charge, are evidence against a prisoner, and are not evidence for him, because the presumption upon which declarations are evidence is that no man would declare anything against himself unless it were true; but every man, if he was in a difficulty, or in the view to any difficulty, would make declarations for himself.

The Chief Justice submitted the question to the Senate whether it should be admitted, and the vote was—yeas 9 and nays 37. So the question was rejected. There you have precedent both English and American.

Mr. BACON. Mr. President, as the matter is about to be submitted to the Senate, and it will take some time, and the hour fixed for the adjournment of the Senate sitting in the trial of impeachment is about to arrive, I ask that unanimous consent be given that the session of the Senate sitting for this purpose may be prolonged until 6 o'clock, unless otherwise ordered.

The PRESIDING OFFICER. The Senator from Georgia asks unanimous consent that the session of the Senate in the impeachment trial may be prolonged until 6 o'clock, unless otherwise ordered. Is there objection? The Presiding Officer hears no objection, and it is agreed by unanimous consent that the session of the Senate sitting in the impeachment trial shall be prolonged until 6 o'clock, unless some motion for adjournment should be made earlier than that time.

Mr. McLAURIN. Mr. President, I merely rose to ask what the question is, so that I may know how to vote on it.

The PRESIDING OFFICER. The Presiding Officer will state the question. Counsel for the respondent offered to prove, as affecting the question of his residence, statements made by the respondent to the witness in the year 1894 or 1895 as to where it was his intention to reside. That is the question which is submitted to the Senate.

Mr. HIGGINS. I wish further to say that I intend also to put to the witness the question as to where the Judge stated at the time he did reside.

Mr. Manager OLMSTED. That would be equally objectionable.

The PRESIDING OFFICER. And, further, the statements made by Judge Swayne at that time as to where his residence was. Senators in favor of the admission of such testimony will say "aye," opposed "no." [Putting the question.] In the opinion of the Presiding Officer the "ayes" have it. The "ayes" have it. The counsel will ask the question.

Q. (By Mr. Higgins.) Will you please state what Judge Swayne said as to his residence when this invitation to reside at Tallahassee was brought to your attention?

A. He said he would not accept it.

Q. Did he give any reason for that? State all he said.

A. I can only in a general way.

Q. To your best recollection, sir?

A. He said he would continue to reside in Pensacola, and discussed or presented to me the merits of some property—residence property.

Q. Did he say anything about his getting a residence there—a house, I mean—a dwelling?

A. He described some property that he thought would be a good investment.

Q. A good investment?

A. As a residence.

Q. Do you know or not his stating at that time that he would not go to Tallahassee because he was residing at Pensacola?

Mr. Manager PERKINS. I must object to that as leading.

Mr. HIGGINS. I was endeavoring to restate what I understood the witness to have already stated.

Mr. Manager PERKINS. It is quite unnecessary. He is a willing witness.

Mr. HIGGINS. I withdraw it. I do not want to do anything that is unfair or get any advantage at all. There is no need of it.

The PRESIDING OFFICER. The Presiding Officer trusts that the Senate will be in order and will not indulge in audible conversation.

Q. (By Mr. Higgins.) Mr. Jackson, do you know whether or not Judge Swayne with his family went to Europe in any year?

A. They went.

Q. What year, sir?

A. It may have been 1898.

Q. Do you know how long the judge remained over there?

A. During the summer time.

Q. Do you know how long the remainder of the family stayed there?

A. About a year.

Q. Do you know where the family came to reside after they returned?

Mr. Manager PERKINS. I object to that. It is calling for a conclusion of law. I do not object to the witness stating what they did.

Q. (By Mr. Higgins.) Well, where they went to abide, to get under roof?

A. They lived in Wilmington, Del.

Q. For how long?

A. Probably until spring. I do not recollect exactly.

Q. Did you visit Judge Swayne at any time at Pensacola?

A. I did.

Q. What year?

A. 1902, I think.

Q. But not before?

A. Not before.

Q. Had you any personal knowledge of his holding court outside of his district?

A. I had not.

Q. Nothing of your own knowledge?

A. I had not.

Mr. HIGGINS. That is all, I believe.

Cross-examined by Mr. Manager PERKINS:

Q. Just one or two questions. How often were you at Guyencourt between 1894 and 1901?

A. A number of times. I could not answer definitely.

Q. How many have you any recollection of?

Mr. HIGGINS. I did not get the question.

Q. (By Mr. Manager PERKINS.) How often were you at Guyencourt between 1894 and 1901? Were you there every year?

A. A number of times each year.

Q. Where was Judge Swayne's mother during those years?

A. When I visited Guyencourt she was there.

Q. Was she there during those years at any time in the winter?

A. She stayed North one winter and kept the house open. Whether it was in those years or not I am not exactly positive.

Q. You mean that she kept the house open at Guyencourt?

A. At Guyencourt.

Q. Did she at any time between 1894 and 1901 keep the house open at Guyencourt?

A. I can not locate that year.

Q. Any of those years; any of the six years?

A. She was there one winter.

Q. But you can not say what winter?

A. Not with certainty.

Q. Now, when you were there Judge Swayne was there and his family were there, were they not?

A. Not in winter; in summer.

Q. When you were there?

A. In summer.

Q. Were you there in the winter yourself?

A. When Mrs. Swayne was there?

Q. One winter when she was there?

A. Yes.

Q. Where did Judge Swayne's wife and children stay in the winter of 1894, if you know?

A. I think they were in St. Augustine.

Q. And where were they in 1895 and 1896?

A. Probably at St. Augustine.

Q. Were they at St. Augustine in 1897?

A. I think not.

Q. Where were they in 1897?

A. It may have been they went that winter. I can not answer from recollection.

Q. As far as you know, Judge Swayne's family spent their winters at St. Augustine except the one winter they spent in Europe, from 1894 to 1900?

A. A portion of the winter after returning from Europe they stopped in Wilmington.

Q. And the winter after returning from Europe they stopped in Wilmington. Now, when you were there in the summer who was running the house?

A. Mrs. Swayne.

Q. Mrs. Swayne?

A. Mrs. Anne P. Swayne.

Q. Did she pay the expenses of the family?

A. In part.

Q. Did she pay all the expenses of the house?

A. I can not explain. I do not know.

Q. You do not know? Did Judge Swayne pay the bills—I mean the butchers' bills, and those bills—or did his mother?

A. I do not know.

Q. Do you know the fact that Judge Swayne had horses at Guyencourt?

A. He had.

Q. Several horses, did he not?

A. He had three.

Q. Those were at Guyencourt all these years, were they not?

A. While he owned them.

Q. You never knew of his taking those horses South, did you?

A. He did not.

Q. The horses resided at Guyencourt, did they not, whenever he did?

A. They were there continuously.

Q. Did Judge Swayne have any other property there?

A. Not that I know of.

Q. What rooms did he occupy in the house?

A. The second story.

Q. Was there anybody there except Judge Swayne's family and his mother?

A. Only as visitors.

Q. When did his father die?

A. In 1889.

Q. And how old was Mrs. Swayne at that time, the mother?

A. She is in her 87th year now.

Q. Does she spend her winters with you?

A. She does latterly.

Q. When did she first begin to do that?

A. Probably six years since.

Q. That was in 1897 or 1898?

A. Soon after that, I think.

Q. What do you mean by saying that Mrs. Swayne, the mother, paid the expenses in part?

A. She received, as I understood, the rental of the farm and used that.

Q. Did she turn in toward the expenses of the establishment anything except the rental of the land?

A. Not that I know of.

Q. What?

A. Nothing more than I know of.

Q. And all the other expenses were paid by Judge Swayne, as far as you know, were they not?

A. That is my presumption.

Q. Then your presumption and your recollection is that Judge Swayne paid the entire expenses of the Guyencourt establishment, except the rental from the farm was turned in toward those expenses? Is that the fact?

A. I do not know that of my own knowledge. That is simply a presumption.

Q. Was the money received by Mrs. Swayne for rent turned into the expenses of the house or did she use it for her own private expenses?

A. I can only answer presumption.

Q. Well, what is your presumption?

A. The presumption is that they were used for general expenses.

Q. You think they were used for general expenses?

A. I have no doubt of it.

Q. How large a farm is there?

A. About 80 acres.

Q. How much did it rent for?

A. I think it rented for \$300.

Q. Now, how early were you ever at Guyencourt?

A. How early?

Q. Yes, how early in the year?

A. I was in the habit of visiting Guyencourt any time that suited our pleasure and convenience—frequently.

Q. What is the earliest time you ever saw Judge Swayne there from 1894 to 1900? How early in the year?

A. In the early summer, perhaps June, May.

Q. Well, you saw him there in May, did you not?

A. I may have.

Q. Did you ever see him earlier than that from 1894 to 1900?

A. I can not say that I did. His time there was the summer.

Q. I am not asking for that. I am asking when you saw him. How late did you see him there?

A. Until August; possibly September.

Q. Now, Mr. Jackson, is it your recollection that you ever saw Judge Swayne there as late as October?

A. It may have been. He may have been there as late as October on some occasion.

Q. Who employed the servants in the establishment when you were there?

A. There were servants employed by Mrs. Swayne and by the judge's wife.

Q. Mrs. Swayne, as I understand, contributed nothing except the rent, the \$300 rent.

A. She had her own servants.

Q. She had her own servants besides. Well, who hired the servants who took care of the horses, and cooked the meals, and cleaned out the house?

A. I can only presume in answering.

Q. You would presume Judge Swayne did, would you not?

A. Yes.

Mr. Manager PERKINS. I think that is all.

Reexamined by Mr. HIGGINS:

Q. One question only. Was or was not the furniture in that house, which has been spoken of in the cross-examination, furniture that belonged to it during the lifetime of Mr. Swayne, the father of the Judge, and has been in that family for sixty years?

A. The same furniture.

Q. It is Mrs. Swayne's now?

A. Yes, sir.

Mr. SCOTT. Mr. President, if this question is in order I should like to have it propounded.

The PRESIDING OFFICER. The Senator from West Virginia propounds the following question; which will be read:

The Secretary read as follows:

Q. Where has Judge Swayne's home been since he was appointed judge?

Mr. Manager PERKINS. I dislike very much to object to any question put by a Senator, because our object is to furnish knowledge of the facts to the Senate; yet it seems to me, Mr. President, that as we have often suggested all these questions should be those that call the witness's attention to what the judge has actually done. Where he has been, what he has done, what the facts are, we are anxious, of course, should be presented, but that the witness should give an opinion, which really is the question that the Senate itself must answer, seems to us hardly within the rule. Of course, we do not wish to object to any fact that any Senator may desire to call out. Anything that we may have omitted to ask, we would be glad to have the Senate ask, as to what Judge Swayne did, where he was, what he was doing during these seven years.

The PRESIDING OFFICER. The Presiding Officer will not undertake to decide, if questions are raised about it, what question may be asked by Senators.

Mr. Manager OLMSTED. I do not understand that the honorable manager objects to the question, but simply to its being answered by the witness. That may seem an immaterial point, but it was argued at some length in the Johnson case.

Mr. SCOTT. Mr. President, as I understand it we are seeking light on this question. How shall we determine where the residence of Judge Swayne is unless we hear from witnesses on that point?

Mr. Manager PERKINS. I suggested any facts the witness can give. Of course we would be glad to have him state, but not to have the witness act as judge instead of the Senate.

The PRESIDING OFFICER. The Presiding Officer must remind Senators that debate is not in order. The Presiding Officer will present to the Senate the question whether the witness shall answer the question which has been propounded by the Senator from West Virginia. The Secretary will read the question.

The Secretary read as follows:

Q. Where has Judge Swayne's home been since he was appointed judge?

The PRESIDING OFFICER. Shall the witness answer this question? (Putting the question.) In the opinion of the Chair the noes have it. The noes have it.

Mr. QUARLES. I should like to ask one question.

The PRESIDING OFFICER. The Senator from Wisconsin propounds the following question.

The Secretary read as follows:

Q. What year did Judge Swayne cease to keep his horses at Guyencourt, Del.?

Mr. CULBERSON. May we have the question read again?

The PRESIDING OFFICER. It will be again read.

The Secretary read as follows:

Q. What year did Judge Swayne cease to keep his horses at Guyencourt, Del.?

Mr. HIGGINS (to the witness). Answer the question.

The WITNESS. Some of them are there now.

The PRESIDING OFFICER. Are there any further questions?

Mr. HIGGINS. That is all. Call Robert McCullough.

Robert McCullough sworn and examined.

By Mr. HIGGINS:

Question. Where do you reside, Mr. McCullough?

Answer. Guyencourt, Del.

Q. What is your occupation?

A. Farming.

Q. Are you a tenant farmer or do you live upon your own land?

A. I live upon my own land.

Q. How long have you lived there?

A. Forty-eight years.

Q. Is that your age?

A. That is my age.

Q. All your life, then?

A. All my life.

Q. How near to the Swayne property?

A. Within sight.

Q. Within sight?

A. Less than ten minutes' walk.

Q. Is it within half a mile of it?

A. I would say so.

Q. You, of course, have known that place familiarly all your life then?

A. I have.

Q. Do you know who that property belongs to?

A. Mrs. Anne Swayne.

Q. Is she the widow of Henry Swayne?

A. Yes, sir.

Q. The mother of the Judge?

A. Yes.

Q. Is the farm rented?

A. The farm is rented.

Q. It has been rented all these years since Mr. Swayne died?

A. Yes.

Q. To a tenant?

A. To a tenant.

Q. One tenant or another?

A. Different ones.

Q. Who has occupied the mansion house since that time?

A. Mrs. Swayne.

Q. It is her house?

A. It is her house.

Q. Have you known of Judge Swayne's being there?

A. I have seen him there.

Q. At what time of the year?

A. Summer time.

Q. At any other time than the summer?

A. I believe not.

Q. Tell the Senate whether or not you have seen him there each and every year.

A. Yes; I have.

Q. During the summer time?

A. During the summer time.

Q. Have you seen him there during September or October?

A. I believe not, to the best of my knowledge.

Q. Have you ever known him to be there living in that house after the month of October or before the month of June?

A. I believe not.

Q. Do you know whether or not the house is open or closed during that time of the year?

A. How is that?

Q. Do you know whether the mansion house is closed or is it open and occupied during the time of the year from the beginning of November until June?

A. From the beginning of November to June?

Q. Yes; whether it has been occupied or closed?

A. Yes; Mrs. Swayne occupies it, but in the winter time she has been going to her daughter's.

Q. Has anybody else been there when she was gone?

A. No; the house would be closed.

Q. The house would be closed?

A. It is closed now.

Q. Did you know Judge Swayne when he lived there with his father? Were you old enough to know that?

A. I have seen him come there and go away again.

Q. Do you know at what time he went to Florida to live?

A. I do not remember the date, but I know he went to Florida, or at least it was so said.

Q. And has he, or not, been in the habit since he went to Florida of coming there during the summer time, as you have spoken?

A. Yes.

Q. Do you know in what year his father died?

A. Well, I could not say positively what year—between 1885 and 1890.

Q. Has there been any difference between the lengths of his visits since 1894 and before that time?

A. I should say not.

Q. Do you know whether Judge Swayne ever voted or did any other act of citizenship in Delaware from Guyencourt?

A. I believe not, to the best of my knowledge.

Q. Have you held any official position?

A. I have.

Q. What?

A. I have been in the legislature of Delaware at one time.

Q. May I ask what your politics is?

A. Democrat.

Q. And a member of the Delaware legislature?

A. Yes, sir.

Q. Have you taken an active part in affairs?

A. I have.

Q. And in politics?

A. Yes, sir.

Q. Have you ever known of the Judge to vote there since the left his early residence?

A. I have not.

Mr. HIGGINS. That is all.

Cross-examined by Mr. Manager PERKINS:

Q. Just a question or two. How often were you at the Guyencourt house between 1894 and the fall of 1900?

A. Please repeat that.

Q. How often were you at the Guyencourt residence between July, 1894, and the fall of 1900? Were you there often or seldom?

A. I have passed there quite often. Our post-office is there at Guyencourt.

Q. Do you remember any time in those years when the mother was there except when Judge Swayne was also there?

A. The mother has been there all her life, as near as I can recall—that is—

Q. Do you testify that Mrs. Swayne, the mother, has been there during the winter in the last few years? Is that your recollection?

A. My recollection is that some winters of late she has not been there.

Q. Has she been there during the winters for the last nine years.

A. I should say to the best of my knowledge that she has.

Q. Do you not know the fact that she now lives at Philadelphia with her daughter?

A. She has lived there, but now she—

Q. She has for some years, has she not?

A. Well, she may—yes, in the winter time.

Q. When Judge Swayne was there his wife and children were there at Guyencourt?

A. I think not.

Q. You think they were not there when the judge was there?

A. I may have seen them there once or twice.

Q. In other words, you think that during these six or seven years you only saw the wife and children at Guyencourt once or twice?

A. Only a very few times.

Q. You think the judge spent the summer there alone with his mother? Is that your recollection?

A. His visits were home during the summer time.

Q. Were what?

A. His visits to home.

Q. But you think he came alone to make these visits?

A. I saw him come there alone and get off the train.

Q. Then it is your recollection that during these six or seven years when Judge Swayne was there in the summer, his family was not there with him. Is that your recollection?

A. I have not seen his family there but once or twice, to the best of my knowledge.

Q. Did you not know about his wife and children just as you did about Judge Swayne.

A. Only if I had occasion to see them.

Q. You saw so little of the family during six or seven years that it is your recollection the wife and children were not there during the six or seven years, except once or twice?

A. That is my recollection.

Q. How many horses did Judge Swayne keep there?

A. I could not tell you.

Q. Well, did he keep any?

A. Yes.

Q. Were those horses worked on the farm?

A. The farm was rented to a tenant.

Q. Well, what was done with the horses? What did he keep them there for?

A. He kept them there to drive, I suppose.

Q. What was done with the horses when he was not there?

A. That is more than I can tell.

Q. Who rented this farm?

A. Different tenants.

Mr. Manager PERKINS. That is all.

Mr. HIGGINS. That will do.

Atwood Wilson sworn and examined.

By Mr. HIGGINS:

Question. What is your age, Mr. Wilson?

Answer. Fifty-one.

Q. What is your occupation?

A. Farmer and coal dealer.

Q. Where do you reside?

A. In Guyencourt.

Q. You are a coal dealer and farmer, you say?

A. Yes, sir.

Q. How long have you lived at Guyencourt?

A. All my life.

Q. Do you live right at Guyencourt?

A. The coal yard is at Guyencourt; my home is about half a mile away.

Q. Your coal yard is at the station? Is it a station and post-office?

A. It is a station and post-office.

Q. How long has it had that name?

A. About fifteen years.

Q. And it was after the railroad came and the station was located there?

A. Yes, sir; fifteen years after.

Q. Are you familiar, or not, with the homestead there of Henry Swayne during his life-time?

A. Yes, sir.

Q. Whom does that property belong to since his death?

A. His wife, Mrs. Anne P. Swayne.

Q. His widow?

A. Yes, sir.

Q. Is she the mother of the Judge?

A. Yes, sir.

Q. Will you please state whether you have known Judge Swayne to be at that place, that homestead, and, if so, during what time of the year—at any time from 1894 up to the present time?

A. He was there in the summer time.

Q. In the summer time?

A. Yes, sir.

Q. Any other time than the summer?

A. I have never seen him there at any time, without it was for one day. I have seen him there one day.

Q. And your place of business was at the station?

A. Right near the station.

Q. How far was the Swayne house from the station?

A. About 200 yards.

Q. It is very near the station, also?

A. Yes, sir.

Q. What has been done with the farm since Henry Swayne's death?

A. It has been rented.

Q. It has been rented to tenants?

A. Yes, sir.

Q. Do you know on what terms—whether it is a share rent or a money rent?

A. A money rent, I believe.

Q. Do you know for what amount?

A. No, sir.

Q. Now, do you know whether Mrs. Anne Swayne has resided at that place during the years since her husband's death—

has been there living in the house during all the time, or whether she has spent any of the time elsewhere?

A. She is always there from early spring until late fall; but through the cold winter months she is mostly with her daughter in Philadelphia.

Q. How long now has that course of living been pursued by her, so far as you know?

A. I should think about six years.

Q. About six years?

A. Possibly longer; I could not just say.

Q. Before that time, where did she spend her winters?

A. She would spend some of the winters there and some of them, I think, she would go South to the Judge's.

Q. Some she would spend there and some she would go South to the Judge's?

A. Yes.

Q. Have you ever known the judge or his family to spend a winter at Guyencourt since he has been living in Florida?

A. Not to my knowledge; they have not.

Q. And you live right there within a half mile of the station?

A. Yes, sir.

Q. And your place of business was at Guyencourt station and the Swayne house was within 200 yards of it?

A. Yes, sir.

Q. You say you are a farmer. Is it a farm that you own yourself or do you rent it?

A. I own my own farm.

Q. You own your own farm?

A. Yes, sir.

Q. And have lived there all your life?

A. Yes, sir.

Q. Do you know whether Judge Swayne has ever paid taxes or voted there?

A. No, sir.

Q. What do you mean?

A. That he has not.

Q. Or any other acts of citizenship?

A. No, sir.

Mr. Manager PERKINS. We will concede that Judge Swayne has not paid taxes anywhere. It is not necessary to prove it.

Mr. HIGGINS. It is a pertinent question.

Mr. Manager CLAYTON. He had property there, but did not pay taxes. We admit that.

Q. (By Mr. HIGGINS.) Do you know of Judge Swayne and his family going to Europe?

A. Yes, sir; I remember.

Q. When?

A. I can not say positively the year. It was in the summer time they left there, I know—in July.

Q. It was in the summer time when they left?

A. Yes, sir.

Q. Do you know whether or not the judge returned the same year?

A. Yes, sir.

Q. Did you see him after he came back?

A. I think he came and visited his home, if I am not mistaken.

Q. He came there to visit his mother, after he returned?

A. I think so.

Q. Do you know of his going to Florida after he returned from Europe?

A. No, sir; but I know that he went there every fall.

Q. Do you know of the judge's family being in Wilmington in any winter?

A. I knew they were there one winter; yes, sir.

Q. What year was that?

A. I think the winter of 1899 or 1900, if I am not mistaken; possibly later. I can not say.

Q. Do you know in whose name the Swayne property is assessed for taxes?

A. Anne P. Swayne, sir.

Q. What would you say, Mr. Wilson, was about the length of the visits of the judge during the summer to Guyencourt?

A. As near as I could say, about two months.

Q. About two months?

A. Yes, sir.

Mr. HIGGINS (to Mr. Manager PERKINS). Cross-examine.

Cross-examination by Mr. Manager PERKINS:

Q. Mr. Wilson, would you be sure that you have not seen Judge Swayne at Guyencourt as early as May in any year?

A. I do not remember, sir.

Q. You do not remember?

A. No, sir.

Q. Have you ever seen him there as late as September or October?

A. About the 1st of September.

Q. The title of this property is in Mrs. Swayne for life, is it not?

A. Yes, sir.

Q. And after her death, where does it go?

A. My understanding is to the judge's son.

Q. Are there any children of Mrs. Swayne?

A. Yes, sir.

Q. There is one son and one daughter?

A. Yes, sir.

Q. Is that the family?

A. Yes, sir.

Q. And the property, as you understand, goes not to the daughter, but to the judge's son?

A. Yes, sir.

Q. Did you ever sell coal to that house?

A. I did.

Q. Did you ever sell coal to Judge Swayne?

A. No, sir.

Q. Do you sell supplies for farms or horses?

A. No, sir; nothing but coal.

Q. How many horses did Judge Swayne have there?

A. Only one, to my knowledge, of his own.

Q. Only one to your knowledge?

A. One driving horse was all I ever heard was his horse.

Q. Was he assessed on that?

A. I could not say.

Q. Has he a horse there now?

A. Not to my knowledge.

Q. You do not know about that?

A. No, sir; I do not think he has.

Mr. Manager PERKINS. That is all.

Reexamined by Mr. HIGGINS:

Q. There is one question that I neglected to ask. Do you sell coal to that place?

A. Yes, sir.

Q. Who pays for it?

A. Mrs. Swayne.

Q. Mrs. Anne Swayne?

A. Yes, sir.

Martin Turner sworn and examined.

By Mr. HIGGINS:

Question. Mr. Turner, what is your age?

Answer. Fifty-nine years old.

Q. Where do you live?

A. Guyencourt.

Q. Delaware?

A. Yes, sir.

Q. What is your occupation?

A. Well, farmer.

Q. How long have you been a farmer there—how long have you lived at Guyencourt?

A. Since 1898.

Q. Since 1898?

A. Yes, sir.

Q. Where do you live at this time?

A. In the neighborhood of Guyencourt.

Q. Have you ever lived on the Swayne property?

A. Yes, sir.

Q. In what capacity?

A. I rented the farm of Mrs. Swayne.

Q. You rented the farm of Mrs. Anne Swayne, the mother?

A. Yes, sir.

Q. Do you know what year you rented it from her?

A. 1898.

Q. And how long did you so rent it—how many years?

A. I was there for four years.

Q. You were there for four years?

A. Yes, sir.

Q. Have you been farming since you left that place?

A. Well, not exactly myself, but with my son.

Q. On whose place is that?

A. Howard Ely's.

Q. How far is that from the Swayne homestead?

A. It is about half a mile.

Q. Now, during that time did Mrs. Anne Swayne spend any of her time at her place there?

A. Yes, sir.

Q. What time of the year did she spend there?

A. Well, the summer.

Q. In the summer time?

A. Yes, sir.

Q. What did she do after the summer?

A. Well, she went, so far as I know, to Philadelphia to her daughter's.

Q. To her daughter's there?

A. Yes, sir.

Q. That was her habit from the time you went there?

A. Yes.

Q. Did she ever spend any of the winter on the farm while you were there?

A. Yes; some part of the winter. I can not remember exactly.

Q. Some part of the winter?

A. Yes, sir.

Q. What part? Was it the early part, or would she come down there in the midst of the winter?

A. No, sir; in the early part.

Q. You mean she remained later than usual?

A. She remained later than usual.

Mr. MALLORY. Mr. President, we can not hear a word that is said on account of the noise in the Senate, not on account of the witness or of the counsel.

Mr. HIGGINS. It may be that the Secretary can repeat the answers.

The PRESIDING OFFICER. The witness will make himself heard if Senators will be quiet and if order is preserved in the galleries.

Q. (By Mr. HIGGINS.) From whom did you rent the property?

A. Mrs. Swayne.

Q. Was it by a written lease?

A. Yes, sir; I have it in my pocket.

Q. Have you?

A. Yes, sir.

Q. Will you let me look at it?

A. Yes, sir. It is only for a year at a time.

Q. Did you hold over under the same lease?

A. Yes, sir.

Q. Is that [indicating] Mrs. Swayne's signature?

A. Yes, sir.

Q. Is that [indicating] yours?

A. Yes, sir.

The PRESIDING OFFICER. Is there any real question about the ownership of this property?

Mr. Manager PERKINS. None whatever, sir.

Mr. HIGGINS. With that admission, your honor, we will not take this lease from the good man. [To the witness.] Now, please state what time during the year Judge Swayne would be at the home there in Guyencourt?

A. In the summer time.

Q. In the summer time?

A. Yes, sir.

Q. Any other time than summer?

A. Well, not that I know of. He might have been there for a day, or probably something of that kind; but not that I know of.

Q. Did you ever know him as living there?

A. No, sir.

Q. But only as coming there as a summer visitor?

A. That is all.

Q. And his family?

A. Yes, sir.

Q. Were they there during the summer?

A. Part of the time; yes.

Q. And this was the case from the time you went there in 1898?

A. Yes, sir.

Q. You went on on the 25th of March, 1898?

A. Yes, sir.

Q. That is moving time in Delaware. Do you know of Mrs. Swayne one winter keeping open house as late as Christmas?

A. Well, I can not swear, sir, to that.

Q. Do you know what year it was that she remained there rather late?

A. No, sir.

Q. Do you know of the Judge voting in Delaware?

A. No, sir.

Q. In Christiana hundred?

A. I never knew him to be there at election time.

Q. You never knew him to be there at election time?

A. No, sir.

Q. But it was during, as you say, the summer months that you saw him there?

A. Yes, sir.

Q. And only the summer months?

A. That is all, sir.

Cross-examined by Mr. Manager PERKINS:

Q. How much rent do you pay?

A. Three hundred dollars.

Q. When Judge Swayne came there did anybody come with him?

A. Well, that I can not say.
 Q. What?
 A. I can not say that for certain.
 Q. When he went away did anybody go away with him?
 A. Yes, sir.
 Q. Who went away with him?
 A. Mrs. Swayne, his wife.
 Q. What did the children do? Did they go away with him?
 A. Well, I can not remember that.
 Q. You do not know?
 A. No, sir.
 Q. How many children did he have?
 A. Three, as far as I know.
 Q. How old are they?
 A. That I do not know.
 Q. Were those children at his place before Judge Swayne came in the summer?
 A. Yes, sir; sometimes they were.
 Q. How long before?
 A. Well, I do not know that.
 Q. Were they there at any time when the mother, Mrs. Anne Swayne, was not there?
 A. No, sir.
 Q. What?
 A. I do not think they were, unless it was the son, Harry. He might have come out and went in the house.
 Q. Did they remain after Judge Swayne went away?
 A. Yes, sir.
 Q. How long?
 A. You mean his family?
 Q. Yes; his family?
 A. Well, I do not know as they did.
 Q. Well, what is your recollection? We do not know and we want to find out.
 A. Of their going away?
 Q. Yes. Did they go away with the Judge when he went away, or did they stay at Guyencourt a while longer?
 A. They went away at one time. I know they went away at the same time he did from Guyencourt. They went to the station.
 Q. When was that—what year?
 A. That I do not know.
 Q. What time of the year?
 A. Somewhere in the late part of the summer.
 Q. Where did they go?
 A. I do not know. I did not ask them.
 Q. How many horses did the Judge keep there?
 A. He did not keep any that I know of; that is, of his own.
 Q. He did not keep any on the place?
 A. No, sir. There were horses there that belonged to the son, as far as I know.
 Q. As far as you know?
 A. Yes, sir.
 Q. How old was this son in 1898?
 A. I judge he is about 30, or somewhere along there.
 Q. Is he married?
 A. Yes, sir.
 Q. Where is his wife—at the house also?
 A. Yes, sir; part of the time.
 Q. Were they there when the Judge was there or at other times?
 A. When the Judge was there.
 Q. Only when the Judge was there?
 A. Oh, no; they were there after he had gone.
 Q. Where did they live?
 A. In Wilmington.
 Q. They did at that time?
 A. Yes, sir.
 Q. You went there first in 1898?
 A. Yes, sir.
 Mr. Manager PERKINS. That is all.
 Reexamined by Mr. HIGGINS:
 Q. One question, please. Before you went there in 1898, did you live in that neighborhood?
 A. Yes, sir.
 Q. How near to the Swayne place?
 A. I lived on Robert McCullough's place.
 Q. The same man who has been here as a witness?
 A. Yes, sir.
 Q. How long did you live there?
 A. I lived there two years.
 Q. That would bring you back to 1896?
 A. Yes, sir.
 Q. Where did you live before that?

A. I lived in another neighborhood, a place called Montchanin.
 Q. How far is it from Montchanin to Guyencourt?
 A. A couple of miles, I suppose. It is Colonel Dupont's place.
 Q. It is 2 miles from Montchanin to Guyencourt?
 A. Yes, sir.
 Q. Have you lived in that neighborhood all your life?
 A. No, sir.
 Q. When did you first go into it?
 A. Around that neighborhood in 1880.
 Q. Since that time you have?
 A. Yes, sir.
 Q. Have you known the Swayne house since you have been living there?
 A. Yes, sir.
 Q. And the family?
 A. Oh, no.
 Q. When did you first come to know the family?
 A. I first knew the Judge's father, I could not tell you what year—a year or two after I moved into the neighborhood.
 Q. Have you known the Judge ever since his father's time?
 A. No, sir; I only knew the Judge when I rented the place.
 Q. But you did know the father and the family there?
 A. Yes, sir.
 Q. During his lifetime?
 A. Yes, sir.
 Q. Now, then, from that time on have you known of Judge Swayne ever living there during the winter?
 A. No, sir.
 Q. Only during the summer?
 A. Yes, sir.
 Mr. HIGGINS. That is all.
 Mr. Manager PERKINS. We have no questions.

Charles C. Morris sworn and examined.

By Mr. HIGGINS:

Question. Where is your residence?

Answer. Guyencourt, Del.

Q. What is your occupation?

A. Station agent and postmaster.

Q. How long have you held those positions?

A. For four years the coming June.

Q. When did you first know the family of Judge Swayne and his father?

A. I am not positive about the date, but I think it was 1862.

Q. I will ask you if you were not raised in that family?

A. Partly so; yes, sir.

Q. By the Judge's father?

A. Yes, sir.

Q. Have you or not been intimate with the family in that way during your life?

A. Yes, sir; ever since.

Q. Where did you live prior to your becoming postmaster and station agent?

A. I lived in Chester County, within about one hour's drive from Guyencourt.

Q. Across the line in Chester County, Pa., about one hour's drive from Guyencourt?

A. About one hour to an hour and a quarter; along there.

Q. How long did you live there?

A. Eighteen or nineteen years.

Q. During that time did you or not keep up your intercourse with the Swayne family?

A. Yes, sir.

Q. Where did Mrs. Anne Swayne live after her husband's death?

A. She lived in the old mansion.

Q. Did she live there during the winter?

A. No, sir.

Q. Where did she spend her winters?

A. She did one winter, I think.

Q. Where did she spend her winters?

A. With her daughter in Philadelphia.

Q. Do you know whether or not she also spent winters with her son in Florida?

A. I think she did one winter. I am not positive about that.

Q. Now will you please say what time of the year Judge Swayne and his family would spend at the Swayne mansion?

A. The summer time.

Q. Any other time than the summer?

A. I never saw them there in the winter time—that is, to stay.

Q. Never to stay?

A. No, sir. I never saw them stay over one night.

Q. In the winter time?

A. No, sir.

Q. Was this the course during all your knowledge of this family, as you have given it?

A. Yes, sir.

Q. Were they there any more before you were postmaster than since?

A. No, sir; just the same.

Q. Their habit in that respect in the last four years is the same as it was before?

A. Yes, sir.

Q. Have you had charge of the property in any way?

A. I generally took charge through the winter for Mrs. Anne Swayne.

Q. How long have you been doing that?

A. Ever since I have been there, more or less.

Q. Since the last four years?

A. Yes, sir.

Q. And the farm has been rented out to tenants?

A. Yes, sir.

Q. You are postmaster?

A. Yes, sir.

Q. Will you please state what times of the year mail comes there for Judge Swayne?

A. During the summer.

Q. Any other time?

A. I do not remember of ever having a letter there at any other time.

Q. If any does come there when he is absent, what do you do with it; what are your directions?

A. We remail it to Pensacola, Fla.

Q. By whose directions?

A. By direction of the Judge.

Mr. HIGGINS (to the managers on the part of the House.) Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. You became postmaster when?

A. 1901.

Q. 1901?

A. June, 1901.

Q. So the evidence which you have given about letters being received and forwarded begins with the year 1901?

A. Yes, sir.

Q. Prior to that time you were not postmaster and had nothing to do with it?

A. No, sir.

Q. Did Judge Swayne and his family ever stay in Wilmington?

A. That I am not positive to state.

Q. You do not know whether they did or did not?

A. No; I can not say.

Q. Did you ever hear of their being at Wilmington in the winter time?

A. I heard he was there one winter with his son. I do not know how long.

Q. You heard that Judge Swayne spent one winter or part of one winter in Wilmington?

A. I do not know how long; a part.

Q. When he came in the early summer did he come alone or bring his whole family with him?

A. Brought his family.

Q. Were the family there already or did he bring them?

A. Sometimes they were there and sometimes he brought them.

Q. Did they go away with him? Did they leave with him?

A. Mostly; yes, sir.

Q. Do you know where they went?

A. Pensacola, from what I could understand.

Q. Do you testify that when they left there in 1896 and 1897 and 1898 and 1899 they went to Pensacola, Fla.? Is that your evidence?

A. I could not say positively where they went. They left Guyencourt for there.

Q. You do not know anything about it?

A. I checked their trunks, I think, to Washington.

Q. To Washington?

A. Yes, sir.

Q. Then you do not mean to testify that from 1894 to 1900, when Mrs. Swayne and the children left, they went to Pensacola, Fla.?

A. I could not say; no, sir.

Q. Do you know any time during those six years when they went from Guyencourt to Pensacola, Fla.? I do not mean the judge, but I mean his family.

A. I can not remember that.

Mr. Manager PERKINS. That is all.

Mr. HIGGINS. That will do, Mr. Morris.

The PRESIDING OFFICER. The Presiding Officer will inquire how many more witnesses it is probable the counsel for respondent will call?

Mr. HIGGINS. There are two witnesses who are in attendance to-day. They are on the question of residence, and will be short. We should like to examine them to-morrow. There are two officers of the Treasury whom we have in attendance, but we will want to call them after we shall have offered certain documentary evidence.

The PRESIDING OFFICER. What length of time do counsel think they will require for the rest of the witnesses?

Mr. HIGGINS. I do not think it will take a half hour.

Mr. THURSTON. It will take not more than thirty or forty minutes, unless some of our offers of documentary evidence may lead to objection and discussion.

The PRESIDING OFFICER. May the Presiding Officer inquire whether there will be many witnesses in rebuttal?

Mr. Manager PALMER. No, sir. We shall probably not have more than one witness in rebuttal, or perhaps two.

The PRESIDING OFFICER. It is entirely probable that two hours to-morrow will conclude the examination of witnesses?

Mr. HIGGINS. Oh, quite.

Mr. THURSTON. We think so.

Mr. President, I now offer in evidence, and ask to have them go into the RECORD without reading, certificates from the clerks of the various courts of the United States where Judge Swayne has held court, showing the times and dates during all these years when he has been holding court in other districts than his own, and also in his own.

Mr. Manager PALMER. Let us take those and we will bring them in in the morning.

Mr. HIGGINS. There is no objection to that.

Mr. THURSTON. Certainly not.

The PRESIDING OFFICER. Could not the managers and counsel agree upon a statement as to the number of days Judge Swayne held court outside of his district, as well as within the same?

Mr. Manager PALMER. There is in this record a statement of all the times that Judge Swayne held court out of his district—at least all the days he was paid for, and I suppose that covers all the time.

The PRESIDING OFFICER. If it is possible for managers and counsel to agree on that subject, it would shorten the proceedings and the record.

Mr. Manager PALMER. Perhaps we can agree, sir.

Mr. THURSTON. By agreement it is to be stated as a part of the testimony that Judge Swayne was born in the year 1842.

Mr. FAIRBANKS. I move that the Senate sitting as a court of impeachment adjourn, to meet at 1 o'clock to-morrow afternoon.

The motion was agreed to; and (at 5 o'clock and 58 minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow, February 23, at 1 o'clock p. m.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

The PRESIDENT pro tempore resumed the chair.

HOOR OF MEETING TO-MORROW.

Mr. ALLISON. I move that when the Senate adjourn to-day it be to meet at 11 o'clock to-morrow morning.

The motion was agreed to.

LEWIS AND CLARK EXPOSITION.

Mr. FULTON. Mr. President, there is on the table an invitation to the Senate to attend the opening of the Lewis and Clark Exposition. I move that it be taken from the table and referred to the Select Committee on Industrial Expositions.

The motion was agreed to.

COURTS IN ILLINOIS.

Mr. SPOONER. I am instructed by the Committee on the Judiciary, to whom was referred the bill (S. 7049) providing for an additional circuit judge in the seventh judicial circuit, and for the appointment of an additional judge for the northern district of Illinois, and for creating an additional district in the State of Illinois, to be known as the eastern district of Illinois, and for the appointment of a judge and other officers of said district, and for changing the boundaries of the districts in Illinois, and for establishing places for holding court in the several districts thus created, to report it favorably, with an amendment in the nature of a substitute; and I ask unanimous consent that it may be considered at this time.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported

from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and insert:

That there shall be in the seventh circuit an additional circuit judge, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall possess the same qualifications and shall have the same powers and jurisdiction and receive the same compensation prescribed by law in respect to circuit judges of the United States.

Sec. 2. That there shall be in and for the northern district of Illinois an additional district judge, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall possess the same qualifications and shall have the same powers and jurisdiction and receive the same compensation prescribed by law in respect to other district judges.

Sec. 3. That the northern district of Illinois hereafter shall consist of the following counties in the State of Illinois, to wit: Lake, McHenry, Boone, Winnebago, Stephenson, Jo Daviess, Carroll, Whiteside, Lee, Ogle, DeKalb, LaSalle, Grundy, Kendall, Kane, Dupage, Will, and Cook, and that all other counties in the northern district of Illinois as the same has heretofore existed be, and the same are hereby, detached from the northern district of Illinois and annexed to the southern and eastern districts of Illinois as hereinafter provided.

Sec. 4. That the northern district of Illinois shall be divided into two divisions, to be known as the eastern and western divisions. The counties of Boone, Winnebago, Stephenson, Jo Daviess, Carroll, Whiteside, Lee, and Ogle shall constitute the western division of said northern district of Illinois, the courts for which shall be held at the city of Freeport.

Sec. 5. That the terms of the circuit and district courts in and for said northern district of Illinois shall be held at the city of Chicago, as now provided by law, and at the city of Freeport, in the western division of said district, on the third Mondays of April and October of each year.

Sec. 6. That all civil suits not of a local nature, and all criminal prosecutions, shall be commenced and tried in the division of the said northern district of Illinois where the defendant or defendants reside or the offense is committed; but if there are two or more defendants in civil suits residing in the different divisions or districts, the action may be brought in either in which either of the defendants may reside. When the defendant is a nonresident of the district, action may be brought in either division of said district wherein the defendant may be found.

That the marshal and clerk of said district shall each, respectively, appoint at least one deputy to reside in said city of Freeport, unless he shall reside there himself, and also maintain an office at that place of holding court.

Sec. 7. That the division heretofore made of the northern district of Illinois into two divisions, known as the northern and southern divisions of the northern district of Illinois, is hereby abolished, provided that this act shall not work a discontinuance of any suit or proceeding in law, equity, admiralty, or bankruptcy, or any civil proceeding now pending in the southern division of the northern district of Illinois, but all of said suits or proceedings so pending are hereby transferred to the southern district of Illinois as by this act constituted, and shall be heard and disposed of in said southern district of Illinois as though originally instituted in said southern district of Illinois; and it shall be the duty of the clerk of the court from which such suit or proceeding is transferred to transmit to the clerk of the court to which the transfer is made the entire files or papers in all of said causes and all documents and deposits in his court pertaining thereto, together with a certified transcript of the record under the seal of the court of all orders, interlocutory decrees, or other entries in any or all of said causes; and he shall also certify under the seal of the court that the papers sent are all which are on file in said court belonging to said causes respectively; for the performance of said duties said clerks shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs and regularly collected with the other costs in said causes respectively; and such transcripts when so certified and received shall thenceforth constitute a part of the record of said causes respectively in the court to which such transfer shall be made: *Provided*, That all motions and causes submitted and all causes and proceedings, in law, equity, admiralty, or bankruptcy, pending in said southern division of the northern district of Illinois as heretofore constituted, in which evidence has been taken in whole or in part before the district judge of the northern district of Illinois, or taken in whole or in part and submitted to and passed upon by said district judge of said northern district of Illinois, shall be retained, proceeded with, and disposed of in said northern district of Illinois as constituted in this act, and for this purpose the venue of any such causes or proceedings may be changed from the southern division of the northern district of Illinois as heretofore existing to the northern district of Illinois as constituted by this act.

Sec. 8. That all officers who have been heretofore appointed for the northern district of Illinois as heretofore constituted who shall be in office at the time of the taking effect of this act and who reside therein as hereby constituted shall continue in office as officers of the district of their residence until the expiration of their respective terms or until their successors are appointed and qualified, and shall perform the same duties and receive the same salary and compensation as heretofore.

Sec. 9. That the southern district of Illinois hereafter shall consist of the following-named counties, to wit: Rock Island, Henry, Bureau, Mercer, Knox, Stark, Putnam, Marshall, Henderson, Warren, Peoria, Woodford, Livingston, McLean, Tazewell, Fulton, McDonough, Hancock, Dewitt, Logan, Mason, Schuyler, Adams, Brown, Cass, Menard, Macon, Sangamon, Christian, Morgan, Montgomery, Pike, Scott, Macoupin, Greene, Calhoun, Jersey, Bond, and Madison, and that all the other counties heretofore contained in said southern district are hereby detached from said southern district and annexed to the eastern district of Illinois, as hereinafter provided.

Sec. 10. That the southern district of Illinois shall be divided into two divisions, to be known as the northern and southern divisions. The counties of Peoria, Bureau, Stark, Henry, Rock Island, Mercer, Henderson, Warren, Knox, McDonough, Fulton, Putnam, Marshall, Woodford, Tazewell, and Livingston shall constitute the northern division of said southern district of Illinois, the courts for which shall be held at the city of Peoria.

That all civil suits not of a local nature, and criminal prosecutions, must be brought in the division of the said southern district of Illinois where the defendant or defendants reside, or the offense is committed; but if there are two or more defendants in civil suits residing in the different divisions or districts, the action may be brought in

either in which either of the defendants may reside. When the defendant is a nonresident of the district, action may be brought in either division of said district wherein the defendant may be found.

That the clerks of the circuit and district courts of the southern district of Illinois shall be respectively the clerks of the courts of both divisions of the said district; that each of said clerks or his deputies shall keep an office open at all times at each of the places of holding of said court and shall there keep the records, files, and documents pertaining to the court of that division; and said clerks shall be entitled to the same fees now allowed by law. In addition to his powers to appoint deputies, as now prescribed by law, each of said clerks shall be empowered to appoint, with the approval of the court, a chief deputy for a court of that division in which he himself may not reside, who shall have all the powers of the clerk in his absence.

That the marshal and clerk for said southern district of Illinois shall respectively appoint at least one deputy residing in the said northern division, and also maintain an office at that place of holding court.

That the terms of the circuit and district courts in and for said southern district of Illinois shall be held as now provided by law, and, at the city of Peoria, in the northern division of said district, on the third Mondays of April and October of each year.

Sec. 11. That the marshal and the clerks of the circuit and district courts for the southern district of Illinois in addition to the offices now maintained by them shall, respectively, maintain an office at the city of Peoria.

Sec. 12. That there shall be, and hereby is, created an additional judicial district in the State of Illinois to be known as the eastern district of Illinois, and the same shall consist of the following-named counties in Illinois, to wit: Kankakee, Iroquois, Ford, Vermilion, Champaign, Piatt, Moultrie, Douglas, Edgar, Shelby, Coles, Clark, Cumberland, Effingham, Fayette, Marion, Clay, Jasper, Crawford, Lawrence, Richland, Clinton, St. Clair, Washington, Jefferson, Wayne, Edwards, Wabash, White, Hamilton, Franklin, Perry, Randolph, Monroe, Gallatin, Saline, Williamson, Jackson, Hardin, Pope, Johnson, Union, Alexander, Pulaski, and Massac.

Sec. 13. That the President, by and with the advice and consent of the Senate, shall appoint for said eastern district of Illinois a district judge, a marshal, and a district attorney, except where any such officer is retained as hereinafter provided; and clerks for said circuit and district courts shall be appointed in the same manner as is now provided by law with respect to such officers in the southern district of Illinois.

Sec. 14. That the courts and the judges of said eastern district of Illinois, shall within said district, respectively possess the same jurisdiction and powers, civil, criminal, equitable, or otherwise, and perform the same duties as are now respectively possessed and performed by the circuit and district courts and judges of the United States of the southern district of Illinois.

Sec. 15. That the district judge of said eastern district of Illinois shall receive the same compensation as is now by law provided for the district judge of the southern district of Illinois; and the marshal, district attorney, and clerks of the circuit and district courts shall severally possess the powers and perform the duties in said eastern district lawfully possessed and performed by the like officers in the said southern district of Illinois and shall be respectively entitled to like fees, compensation, and emoluments, and, until otherwise provided by law, the salaries herein prescribed or provided for shall be paid out of any money in the Treasury not otherwise appropriated.

Sec. 16. That the terms of the circuit and district courts in and for said eastern district of Illinois shall be held at the city of Danville, commencing on the first Mondays of March and September of each year, and at the city of Cairo, commencing on the first Mondays of April and October of each year, and at the city of East St. Louis, commencing on the first Monday of May and November of each year.

Sec. 17. That all civil causes and proceedings of every name and nature, including proceedings in bankruptcy, now pending in the courts of the northern and southern districts of Illinois as heretofore constituted, whereof the courts of the eastern district of Illinois, as hereby constituted, would have had jurisdiction if the said eastern district of Illinois and the courts thereof had been constituted when said causes or proceedings were instituted, shall be, and are hereby, transferred to, and same shall be proceeded with in, the eastern district of Illinois, and jurisdiction thereof is hereby transferred to and vested in the courts of said eastern district, and the records and proceedings therein and relating to said proceedings and causes shall be certified and transferred thereto; and such records and proceedings when so certified and transferred shall thenceforth constitute a part of the record of said causes, respectively, in the court to which such transfer shall be made, and all such suits and proceedings so transferred shall be heard and disposed of in the regular way at the terms of said courts for the eastern district of Illinois to be held at Danville, East St. Louis, and Cairo, respectively, as herein provided: *Provided*, That all motions and causes submitted and all causes and proceedings in law, equity, admiralty, or bankruptcy, pending at the time of the taking effect of this act in the northern and southern districts of Illinois as heretofore constituted, in which the evidence has been taken in whole or in part before the judges of the said northern and southern district of Illinois as heretofore constituted or taken in whole or in part and submitted to and passed upon by the said judges shall be retained, proceeded with, and disposed of in said northern and southern districts of Illinois, respectively, as constituted by this act.

Sec. 18. That the district judge of the southern district of Illinois in office at the time this act takes effect shall continue to be the district judge for the southern district of Illinois as constituted by this act; that the clerk of the circuit court for the southern district of Illinois in office at the time this act takes effect shall continue to be clerk of the circuit court of the southern district of Illinois as constituted by this act until his successor is appointed and qualified, and the clerk of the district court of the southern district of Illinois in office at the time this act takes effect shall continue to be clerk of the district court of the southern district of Illinois until his successor is duly appointed and qualified, and said clerks of the circuit and district courts of the southern district of Illinois in office at the time this act takes effect shall also be clerks of the circuit and district courts of the eastern district of Illinois, respectively, as constituted by this act until their successors are duly appointed and qualified.

Sec. 19. That all officers not residing in said southern district of Illinois as constituted by this act shall cease to be officers of said southern district when their successors, respectively, for said southern district of Illinois as hereby constituted are duly appointed and qualified. The office of marshal and district attorney in each of said southern and eastern districts of Illinois, deputy marshals and assistant

district attorneys, and all other officers authorized by law and made necessary by the creation of said eastern district of Illinois and the provisions of this act, and all vacancies created in either of said districts shall be filled in the manner now provided by law for the appointment of said officers, respectively, in the southern district of Illinois as the same has heretofore existed. The salaries, pay, fees, and allowances of all officers of the eastern district of Illinois shall be the same as heretofore allowed, respectively, for the same officers in the southern district of Illinois as heretofore constituted.

SEC. 20. That all officers who have heretofore been appointed for the southern district of Illinois, as heretofore constituted, who shall be in office at the time of taking effect of this act and who reside in said southern district as heretofore existing shall continue in their offices, respectively, of the district of their respective residences, as created by this act, until the expiration of their respective terms of appointment, or until their successors are appointed and qualified, and shall perform the same duties and receive the same salaries and compensation as heretofore.

SEC. 21. That special terms of the circuit and district courts may be held in the northern, southern, and eastern districts of Illinois whenever such special terms are deemed necessary by the judges of said courts, respectively, and the time or times of holding such special sessions of said courts shall be fixed by the judges of said courts, respectively, either by a rule of such courts or by special or general order of such courts entered of record in said courts.

SEC. 22. That all prosecutions for crimes or offenses hereafter committed in either of said districts shall be cognizable within the district in which committed.

SEC. 23. That in all prosecutions for crimes or offenses heretofore committed within either the northern or southern districts of Illinois, as hitherto constituted, shall be commenced and proceeded with in each of said districts, respectively, the same as if this act had not been passed.

SEC. 24. That all laws or parts of laws inconsistent herewith are hereby repealed.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

GOVERNMENT OF CANAL ZONE.

The PRESIDENT pro tempore. Unanimous consent was given that the Canal Zone bill should be taken up immediately after the adjournment of the court. The yeas and nays have been ordered on the motion of the Senator from Mississippi [Mr. MONEY] to lay on the table the amendment proposed by the Senator from Maryland [Mr. McCOMAS]. The Secretary will call the roll.

Mr. DOLLIVER. I should like to have the amendment read.

Mr. GORMAN. I wish to say a word to my colleague. I wish to appeal to him to withdraw his amendment on this subject. There will be great controversy over it, and this is only a temporary measure, to last one year. That question can be taken up next year when we take up the whole question with a view to framing some permanent legislation on the subject.

If my colleague will withdraw the amendment, I am authorized by the Senator from Mississippi, who is temporarily absent, to withdraw his motion to lay on the table.

Mr. McCOMAS. Instead of voting on the motion to lay the amendment on the table, let us vote on the amendment itself.

Mr. GORMAN. I am not authorized to do that.

Mr. McCOMAS. Let the amendment be voted on without the yeas and nays.

Mr. GORMAN. I am not authorized to do that.

Mr. McCOMAS. I do not want to delay the Senate at all. There can be a vote by sound.

The PRESIDENT pro tempore. The yeas and nays have been ordered.

Mr. GALLINGER. I demanded the yeas and nays, and if it is in order I withdraw the demand.

Mr. McCOMAS. I am willing to have a vote of the Senate.

The PRESIDENT pro tempore. The question is, the request for the yeas and nays having been withdrawn—

Mr. McCOMAS. Let a vote be taken.

The PRESIDENT pro tempore. The motion made by the Senator from Mississippi [Mr. MONEY], who is not here to withdraw it, was to table the amendment offered by the Senator from Maryland.

Mr. GALLINGER. And the vote would be on that motion.

Mr. GORMAN. Yes.

Mr. BATE. Mr. President, let us understand the status of the vote we are expected to give now. What is the situation? What is the status here? Has the demand for the yeas and nays been withdrawn? Has the motion to lay on the table passed away, or what? I should like to know the status of the matter, and the precise motion on which we are called upon to vote.

The PRESIDENT pro tempore. The motion is that made by the Senator from Mississippi [Mr. MONEY] to lay on the table the amendment proposed by the Senator from Maryland [Mr. McCOMAS].

Mr. McCOMAS. I ask consent that we vote viva voce upon the amendment itself.

Mr. GALLINGER. We must first vote on the pending motion. The PRESIDENT pro tempore. That can not be done. The Senator from Mississippi is not here to withdraw the motion he has made, and that is the pending motion.

Mr. GORMAN. I am not authorized to do that.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Mississippi to lay on the table the amendment offered by the Senator from Maryland. [Putting the question.] By the sound, the "noes" have it.

Mr. GORMAN. I call for a division.

There were on a division—ayes 21, noes 20; no quorum voting.

The PRESIDENT pro tempore. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Alger	Clay	Gorman	Patterson
Allee	Cockrell	Heyburn	Perkins
Allison	Cullom	Kean	Pettus
Bacon	Dick	Kittredge	Platt, Conn.
Bailey	Dietrich	Latimer	Quarles
Ball	Dillingham	McComas	Spooner
Bard	Dolliver	McLanin	Stewart
Bate	Fairbanks	Mallory	Stone
Beveridge	Foster, La.	Martin	Taliaferro
Burnham	Frye	Millard	Teller
Burrows	Fulton	Morgan	Warren
Clapp	Gallinger	Nelson	
Clark, Wyo.	Gamble	Overman	

The PRESIDING OFFICER (Mr. KEAN in the chair). Fifty Senators have responded to their names. A quorum is present. The question is on the motion of the Senator from Mississippi [Mr. MONEY] to lay on the table the amendment of the Senator from Maryland [Mr. McCOMAS].

Mr. CLAPP. The junior Senator from Iowa [Mr. DOLLIVER] has made several pathetic appeals to the Chair to have the amendment read. I think it would be to the advantage of all of us to have it read.

The PRESIDING OFFICER. If there is no objection, the amendment will be again read.

The SECRETARY. On page 6, after line 9, insert:

That vessels of the United States, or vessels belonging to the United States, and no others, shall be employed in the transportation by sea from the United States of all materials, supplies, machinery, and equipment employed on or used for the Panama Railroad, or for the construction and operation of the canal across the Isthmus of Panama, and each contract for such articles shall provide specifically for transportation by vessels of the United States, and vessels of the United States or belonging to the United States and no others shall be employed in the return by sea to the United States of such materials, supplies, machinery, and equipment, unless the President shall find that the rates of freight charged by such vessels are excessive and unreasonable or that vessels of the United States or belonging to the United States are not available for prompt service: *Provided*, That no greater charges be made by such vessels for transportation of such articles for the use of the Panama Railroad or the construction and operation of the canal across the Isthmus of Panama than are made by such vessels for the transportation of like goods for private parties or companies.

The PRESIDING OFFICER. The question is on the motion of the Senator from Mississippi to lay the amendment on the table.

Mr. DIETRICH. Mr. President—

The PRESIDING OFFICER. It is not debatable.

Mr. DIETRICH. I should like to ask whether the amendment has been acted on by the committee.

The PRESIDING OFFICER. The Chair is unable to state.

Mr. GALLINGER. The amendment is part of a bill that was reported from the Merchant Marine Commission, referred by the Senate to the Committee on Commerce, and reported by me from the Committee on Commerce.

Mr. CLAY. Mr. President—

The PRESIDING OFFICER. This discussion is proceeding by unanimous consent. Debate is not in order.

Mr. CLAY. I should like to ask the Senator from New Hampshire a question.

The PRESIDING OFFICER. Debate is not in order.

Mr. CLAY. I simply request unanimous consent to ask a question of the Senator who was in charge of the bill as it came from the Commerce Committee.

The PRESIDING OFFICER. Is there objection to the Senator from Georgia asking a question? The Chair hears none.

Mr. CLAY. I should like to ask the Senator if it is not true that legislation on this line, carefully guarded, was reported, and the bill is now pending here, and would it not be better to take up that bill and pass it rather than insert a part of it in this measure and encumber this legislation, which must necessarily be had, with an amendment of that kind?

Mr. GALLINGER. Of course, that is a question I can not answer; I should be very glad to have this legislation adopted in any way I can get it adopted.

The PRESIDING OFFICER. The question is on the motion

of the Senator from Mississippi [Mr. MONEY] to lay the amendment on the table.

The motion to lay on the table was rejected.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment. [Putting the question.] By the sound it is very hard for the Chair to decide. The Chair is inclined to believe that the "ayes" have it.

Mr. MALLORY. I ask for the yeas and nays.

The yeas and nays were ordered.

The Secretary proceeded to call the roll, and Mr. ALGER voted "yea."

Mr. GORMAN. Mr. President, there has been no answer yet, I think, to the roll call.

Mr. GALLINGER. There was one response.

The PRESIDING OFFICER. Several names have been called, but no answer has been made.

Mr. GORMAN. Therefore I think I am in order.

Mr. ALGER. Mr. President, I answered "yea."

The PRESIDING OFFICER. The Chair did not know the Senator from Michigan had answered.

Mr. BAILEY. The Senator from Maryland took the floor before the response was made by the Senator from Michigan.

Mr. GORMAN. Does the Chair hold that I am in time?

The PRESIDING OFFICER. The Chair did not see the Senator rise, but he will recognize the Senator from Maryland.

Mr. GORMAN. I will not take the floor if there is any question about it, because it would be a bad precedent.

Mr. ALGER. I did not interpose any objection, but I did not want to be counted as not voting when I voted in a clear voice.

The PRESIDING OFFICER. The Chair is informed that the Senator from Michigan had voted at the time, but the Chair did not hear him.

Mr. CLAY. The Chair has recognized the Senator from Maryland?

The PRESIDING OFFICER. The Chair has recognized the Senator from Maryland.

Mr. CLAY. I will ask if it is not true that the Senator from Michigan voted after the Senator from Maryland took the floor?

The PRESIDING OFFICER. He voted after the Senator from Maryland addressed the Chair, but the Chair had not recognized the Senator from Maryland. Does the Senator from Maryland desire to be heard?

Mr. GORMAN. No, Mr. President.

The PRESIDING OFFICER. The Secretary will proceed with the call of the roll. The Chair wants to be entirely fair.

The Secretary resumed the call of the roll.

Mr. DILLINGHAM (when his name was called). I have a general pair with the Senator from South Carolina [Mr. TILLMAN], which I will take the liberty of transferring to my colleague [Mr. PROCTOR], who is absent, and I will vote "yea." This transfer will release the Senator from Florida [Mr. MALLORY].

Mr. FOSTER of Louisiana (when his name was called). I have a general pair with the junior Senator from North Dakota [Mr. McCUMBER]. He being absent, I will withhold my vote.

Mr. GAMBLE (when his name was called). I have a general pair with the junior Senator from Nevada [Mr. NEWLANDS]. I will transfer that pair to the senior Senator from Rhode Island [Mr. ALDRICH], and vote. I vote "yea."

Mr. LATIMER (when his name was called). I have a general pair with the junior Senator from Illinois [Mr. HOPKINS]. I do not see him in the Chamber, and therefore I withhold my vote.

Mr. McLAURIN (when his name was called). I have a general pair with the senior Senator from Washington [Mr. FOSTER]. As he has not voted, I will withhold my vote. If he were present, I should vote "nay."

Mr. MORGAN (when his name was called). I am paired with the senior Senator from Indiana [Mr. FAIRBANKS].

Mr. QUARLES (when his name was called). I have a general pair with the senior Senator from Texas [Mr. CULBERSON]. As he is not here, I will withhold my vote.

Mr. SPOONER (when his name was called). I have a general pair with the Senator from Tennessee [Mr. CARMACK], who is absent, and I will therefore withhold my vote.

Mr. TALIAFERRO (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. SCOTT]. As he is not present, I will withhold my vote.

Mr. TELLER (when his name was called). I have no regular pair. The senior Senator from Maine [Mr. HALE] kindly paired with me when I was absent on account of illness. Fearing there will not be a quorum voting, I think I will vote. I vote "nay."

Mr. WARREN (when his name was called). I have a gen-

eral pair with the senior Senator from Mississippi [Mr. MONEY]. I do not see him in the Chamber, and therefore withhold my vote.

The roll call was concluded.

Mr. SPOONER. May I inquire of Senators on the other side if they know how the Senator from Tennessee [Mr. CARMACK] would vote if he were present?

Mr. BATE. No; I do not know. He is not here.

Mr. SPOONER. If the Senator from Tennessee would vote "nay" if present I would vote "nay" if necessary to make a quorum.

Mr. CLAY. I should like to ask if the senior Senator from Massachusetts [Mr. LODGE] has voted?

The PRESIDING OFFICER. He has not.

Mr. CLAY. I am paired with that Senator.

Mr. CULLOM. I am paired with the junior Senator from Virginia [Mr. MARTIN], but as we are short of a quorum and as we have an understanding that either of us can vote as we choose whenever we please, I vote "yea."

Mr. BAILEY (after having voted in the negative). I have a somewhat similar pair with the senior Senator from West Virginia [Mr. ELKINS]. While this is a question I would not vote upon in his absence if there were a quorum certainly here, being in doubt about the presence of a quorum I will allow my vote to stand. If I were certain that a quorum is present without it I would withdraw my vote.

Mr. CLAPP (after having voted in the affirmative). Observing the absence of my pair, the Senator from North Carolina [Mr. SIMMONS], I desire to withdraw my vote, unless it can be transferred for the purpose of making a quorum.

Mr. McCOMAS (after having voted in the affirmative). I have a pair with the senior Senator from Kentucky [Mr. BLACKBURN] and I had intended to withdraw my vote, observing his absence from the Chamber; but as it may destroy a quorum I will transfer my pair to the senior Senator from New York [Mr. PLATT], and let my vote stand to make a quorum.

Mr. McLAURIN. I desire to state that my colleague [Mr. MONEY] was unavoidably called from the Senate Chamber and he is paired with the senior Senator from Wyoming [Mr. WARREN].

The Secretary recapitulated the vote.

Mr. CLAPP. If it is not too late, I will transfer my pair with the Senator from North Carolina [Mr. SIMMONS] to the Senator from West Virginia [Mr. ELKINS], and for the sake of a quorum, if necessary, I vote "yea."

Mr. BAILEY. Did I understand the Senator from Minnesota to transfer his pair to the Senator from West Virginia [Mr. ELKINS]?

Mr. CLAPP. Yes, sir.

The PRESIDING OFFICER. That is what the Senator from Minnesota did.

Mr. CLAPP. Has the Senator transferred his pair?

Mr. BAILEY. No; I have not. I only let my vote stand upon the supposition that we need all the votes to make a quorum. I raise no question about it. I am perfectly willing—

Mr. CLAPP. It was suggested to me by the Senator from New Hampshire [Mr. GALLINGER] to transfer my pair.

Mr. GALLINGER. I thought the fact that the Senator from Texas [Mr. BAILEY] voted relieved the Senator from West Virginia [Mr. ELKINS]. He is very strongly in favor of this measure, and I thought he ought to have a chance to be paired in its favor.

Mr. BAILEY. I am not willing under that statement to allow my vote to stand—

Mr. CLAPP. The Senator's pair has been transferred.

Mr. BAILEY. Rather than have it transferred—and I am obliged to the Senator from New Hampshire for calling attention to it—I withdraw my vote.

Mr. FRYE. The Senator from Minnesota can transfer his pair to the senior Senator from Maine [Mr. HALE].

Mr. CLAPP. Then I will transfer my pair to the senior Senator from Maine [Mr. HALE] and let my vote stand.

The result was announced—yeas 26, nays 12, as follows:

YEAS—26.

Alger	Clapp	Fulton	Nelson
Allee	Clark, Wyo.	Gallinger	Penrose
Ball	Cullom	Gamble	Perkins
Bard	Dick	Heyburn	Platt, Conn.
Beveridge	Dillingham	Kittredge	Stewart
Burnham	Dolliver	McComas	
Burrows	Frye	Millard	

NAYS—12.

Allison	Cockrell	Kean	Patterson
Bate	Dietrich	Mallory	Stone
Clark, Mont.	Gorman	Overman	Teller

NOT VOTING—52.

Aldrich	Depew	Kearns	Newlands
Ankeny	Dryden	Knox	Pettus
Bacon	Dubois	Latimer	Platt, N. Y.
Bailey	Elkins	Lodge	Proctor
Berry	Fairbanks	Long	Quarles
Blackburn	Foraker	McCreary	Scott
Burton	Foster, La.	McCumber	Simmons
Carmack	Foster, Wash.	McEnery	Smoot
Clarke, Ark.	Gibson	McLaurin	Spooner
Clay	Hale	Martin	Tallaferro
Crane	Hansbrough	Mitchell	Tillman
Culberson	Hawley	Money	Warren
Daniel	Hopkins	Morgan	Wetmore

The PRESIDING OFFICER. No quorum has voted. The Secretary will call the roll.

Mr. OVERMAN. I move that the Senate adjourn.

The motion was agreed to; and (at 6 o'clock and 31 minutes p. m.) the Senate adjourned until to-morrow, Thursday, February 23, 1905, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, February 22, 1905.

The House met at 12 o'clock m.

The Chaplain, Rev. HENRY N. COUDEN, D. D., offered the following prayer:

Our fathers' God and our God, we thank Thee that throughout the length and breadth of the American Republic the hearts of our people will beat to-day with patriotic pride and millions will take the name of Washington reverently upon their lips, and all will praise Thy holy name for what he did and for his great personality. Clear in his conceptions, true to his convictions, wise in his counsels, heroic in battle, magnanimous in peace, we love him for what he did and still more for what he was; and God grant that we may cherish our homes, our country, and with sincere devotion to Thee follow his illustrious example, that liberty and freedom may not perish, but as the waters cover the seas so may they cover the earth and make glad the hearts of the downtrodden and oppressed everywhere. For Thine is the kingdom, and the power, and the glory, forever. Amen.

The Journal of yesterday's proceedings was read and approved.

CONFERENCE REPORT ON ARMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, I desire to call up the conference report on the army appropriation bill.

The SPEAKER. The gentleman from Iowa calls up the conference report on the army appropriation bill.

Mr. HULL. Mr. Speaker, I will ask that the statement only may be read.

The SPEAKER. The gentleman from Iowa asks that the statement may be read in lieu of the report. Is there objection? [After a pause.] The Chair hears none.

The conference report and statement are as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 17473) making appropriations for the support of the Army for the fiscal year ending June 30, 1906, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 19, 20, and 27.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 28, 29, 30, and 31, and agree to the same.

Amendment numbered 25: That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows: In line 23, page 35 of the bill, strike out the words "eighty-one" and insert in lieu thereof the words "two hundred and thirty-one;" and the Senate agree to the same.

Your committee report disagreements on the following amendments: 1, 10, and 11.

J. A. T. HULL,
ADIN B. CAPRON,
JAMES HAY,

Managers on the part of the House.

REDFIELD PROCTOR,
R. A. ALGER,
F. M. COCKRELL,

Managers on the part of the Senate.

The Clerk read the statement, as follows:

Statement of managers on part of the House.

Amendment No. 2 increases the amount for officers in the line, and the House recedes.

Amendments Nos. 4, 5, 6, 7, and 8 apply to length-of-service pay. The Paymaster-General figured the amounts after the bill passed the House and was reported to the Senate. It was absolutely necessary to increase the amounts, and the House recedes from its disagreement and agrees to the same.

Amendment No. 9 is simply a change in the phraseology.

Amendment No. 12 inserts "military commissions" with courts-martial and courts of inquiry, and the House recedes.

Amendment No. 13 increases travel allowance to enlisted men on discharge, and was amended on the further information given by the Paymaster-General, and the House recedes.

Amendment No. 14 refers to additional pay for length of service for the Philippine Scouts, and the House recedes.

Amendment No. 15 authorized the assignment to duty in the office of the Paymaster-General of such paymasters' clerks now authorized by law as may be necessary. The Paymaster-General submitted a strong argument in favor of same, and the House recedes from its disagreement.

Amendment No. 16 is simply a verbal change, and the House recedes.

Amendments Nos. 17 and 18 refer to horses for the artillery, and the House recedes.

Amendments 21 and 22 relate to the transport service, and the Senate amendments make the bill read exactly as reported from the House Committee, and the House recedes from its disagreement.

Amendments 23 and 24 refer to the hospital at Fort Sam Houston, Tex., and increase the appropriation made by the House by the amount provided for Fort Sam Houston, and the House recedes.

Amendment No. 26 is a verbal change, and the House recedes.

Amendments 28, 29, 30, and 31 are simply verbal changes, and the House recedes.

Amendment No. 3 relates to the pay of officers for length of service, and the Senate recedes.

Amendments 19 and 20 relate to the establishment of military posts, and the Senate recedes.

Amendment No. 27 relates to an appropriation for ordnance and ordnance stores, and the Senate recedes.

Amendment No. 25 relates to an additional appropriation for an engineer establishment at Washington Barracks, and changing the total to correspond with the amount inserted in the Senate. The House recedes and agrees to the same with the amendment changing the total.

The committee reported disagreements on amendments Nos. 1, 10, and 11.

J. A. T. HULL,
ADIN B. CAPRON,
JAMES HAY,

Managers on the part of the House.

Mr. SLAYDEN. Mr. Speaker—

Mr. HULL. Does the gentleman desire any time?

Mr. SLAYDEN. Mr. Speaker, I would like to have about three minutes.

Mr. HULL. I yield three minutes to the gentleman from Texas.

Mr. HEMENWAY. Mr. Speaker, if the gentleman will permit me, I was late in getting here—

The SPEAKER. Does the gentleman yield?

Mr. HULL. I think I have the floor.

Mr. HEMENWAY. I just want to ask if the motion has been made to adopt this conference report?

Mr. HULL. I am going to make that motion. Mr. Speaker, I move that the report be adopted.

The SPEAKER. Does the gentleman from Iowa yield? For what purpose does the gentleman from Indiana rise?

Mr. HEMENWAY. Mr. Speaker, I rise for the purpose at the proper time of opposing this conference report or agreement on one item of the conference report—

Mr. HULL. Mr. Speaker, one minute. I yielded to the gentleman from Texas. Now, if the gentleman from Texas will wait a minute I will yield to the gentleman from Indiana. How much time does the gentleman want?

Mr. HEMENWAY. Well, I think ten minutes' time.

Mr. HULL. I yield ten minutes to the gentleman from Indiana.

Mr. ROBINSON of Indiana. Mr. Speaker, a parliamentary inquiry.